Friday

April 26. 1882

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 706.

JAMES W. HARVEY AND JAMES LIVESEY, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS. IN EQUITY.

SUPREME COURT OF THE UNITED STATES.

No. 706.

JAMES W. HARVEY AND JAMES LIVESEY, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS. IN EQUITY.

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In the Court of Claims.

JAMES W. HARVEY AND JAMES LIVESEY
vs.
THE UNITED STATES.

No. 6284. Petition.—Filed Dec. 14, 1870.

The petitioners, James W. Harvey and James Livesey, partners doing business under the firm-name of Harvey & Livesey, who are citizens of the United States and of the State of Wisconsin, by this their petition, respectfully show:

That on the 1st day of June, 1869, they entered into a contract with the United States, acting in that behalf by T. J. Rodman, a lieutenant-colonel of the United States Army, whereby they agreed to do the masonry-work in and about the construction of the piers and abutments for a bridge then to be built, to connect the island of Rock Island, in the Mississippi River, with the city of Davenport, in the State of Iowa.

That said contract was made in the execution of a proposal made by claimants to the defendants in response to a public advertisement of defendants, inviting proposals for said work. That said advertisement also invited separate proposals for putting in the necessary coffer-dams and their protections, but that the petitioners bid only for said masonry work, in the construction of said piers and abutments, and their said bid being the lowest one, for said masonry-work, it was accepted, and the said contract was awarded thereon.

That copies of said advertisement, said proposals, and said contract, are herewith filed, and marked respectively Exhibits A, B, and C.

They were required and did execute and deliver a bond to the United States, in the sum of sixty thousand dollars, for the faithful performance of said contract.

That the petitioners were ready to commence the work under said contract on the 7th day of June, 1869, and had expended large sums of money in and about said business, but that they were not provided with any plans or specifications, nor were the necessary locations of the piers and abutments made for commencing the work by the defendants, until the 14th day of September, 1869, and the claimants, their workmen, tools and machinery were kept idle during that time. That such delay on the part of the United States, was unreasonable and in violation of the petitioners' rights, and that they have suffered damage in consequence of such delays, in the full sum of twenty-five thousand dollars.

That about the 13th day of September, 1869, the United States

might be reasonably worth. And the plaintiffs allege that such extra work was reasonably worth the sum of five thousand dollars.

The petitioners further show, that the defendants have paid them about the sum of forty-six thousand dollars, but the exact amount of said payment they cannot now state. And that they have neglected and refused to pay any other or further sum on account of the said work done as aforesaid; and the plaintiffs claim that there is justly due to them from the defendants by reason of the premises, as follows, to wit:

1.

For damages incurred by reason of the unreasonable delay caused by defendants from 7th June, 1869, to September 4th, 1869. ..... $25,000

2.

For putting in coffer dams and protections, for pumping the water therefrom, and for preparing the beds for the piers and abutments..... 75.000

3.

For loss of profits incurred by the unlawful reduction of the dimensions of the piers and abutments..... 33,600

4.

For increase on the cost of work, by having been compelled to do it in cold weather..... 15,000

5.

For constructing 4,400 cubic yards of masonry at, say $12 per yard 52,800

6.

For loss caused by neglect of defendants to furnish materials and locate piers and abutments, whereby the plaintiffs, their workmen and tools, were kept idle..... 15,000

7.

For loss of machinery, vessels, and tools, caused by the ejectment of the plaintiffs from the work..... 25,000

8.

For dressing coping and corners of abutments, and dressing noses of piers under water, (not required by contract,).. 5,000

$246,400

Deduct cash payment..... 46,000

$200,400

The petitioners therefore pray judgment against the United States for the said sum of two hundred thousand four hundred dollars, ($200,400.)

The petitioners further show that they presented this claim to the War Department for payment and payment thereof was refused; that they are sole owners of said cliam and have never assigned or disposed of it, or any part of it, to any person; that they have at all times borne true allegiance to the Government of the United States, and that they have not at any time or in any way voluntarily aided, abetted, or given encouragement to the rebellion against the United States.

JAMES W. HARVEY,
JAMES LIVESEY.

Address: Madison, Wis.

ENOCH TOTTEN,
Counsel for Claimants,
Washington, D. C.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, James W. Harvey, being first duly sworn on the Holy Evangely of Almighty God, do depose and on my oath say, that I am one of the claimants named in the foregoing petition; that no assignment or transfer of said claim or interest therein has been made; that said Harvey & Livesey are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that I believe the facts as stated in said petition are true.

JAMES W. HARVEY.

Subscribed and sworn to by James W. Harvey, one of the claimants in the above entitled cause, before me this 9th day of December, A. D., 1870.

R. J. MEIGS, *Clerk, &c.*
By R. J. MEIGS, JR., *Ass't Clerk.*

(EXHIBIT A.)

ADVERTISEMENT FOR PROPOSALS FOR BRIDGE MASONRY.

Sealed proposals will be received at this arsenal up to 10 o'clock, A. M., on the 25th day of May, 1869, for the construction of the piers and abutments of the rail and wagon road bridge to be built to connect the island of Rock Island with the city of Davenport.

It is proposed to build say, five common piers, one draw pier, and two abutments. The stone and cement required for the work will

be furnished on railroad cars, on arsenal switch, near the island end of the proposed bridge, and the sand required for the cement will be furnished by the United States at or near the same point. All the masonry must be of the best quality of bridge masonry, the stones in each course must be well banded, and each course well secured by dowels to the course below under cut-water, and at lower end of piers, and the foundation courses must be fairly bedded and well secured to the rock-bed of the river. The work as it progresses being subject to the inspection and approval of the commanding officer of the arsenal, or such other officers or persons as may be designated by proper authority. Detailed information with regard to the general form and dimensions of the piers and abutments, and a profile of bed of river can be obtained by personal application at the arsenal. The total amount of masonry is estimated at about 10,000 cubic yards. All the piers and abutments will be required to be completed prior to the 1st day of December, 1869. Parties making bids will state the price per cubic yard of solid masonry at which they are willing to complete the work, the United States furnishing the stone, cement, and sand as above stipulated, and nothing more. They will also make a bid stating separately the price per cubic yard of solid masonry at which they will undertake to build the piers and abutments, the United States furnishing the stone, cement, and sand as above, and the price at which they will agree to put in the necessary coffer-dams with their protections.

Proposals will be endorsed 'Proposals for Bridge Masonry,' and addressed to the undersigned.

The United States reserves the right to reject any bid not deemed satisfactory.

(Signed) T. J. RODMAN,
Lt. Col. and Bvt. Brig. Gen. U. S. A., commanding Rock Island Arsenal May 12th, 1869.

(EXHIBIT B.)

PROPOSAL.

"We propose to build the masonry of piers and abutments of the Rock Island Bridge, as per annexed advertisement. Small piers and abutments, per yard, $11.00; draw piers and abutments, per yard, $13.00.

(Signed) HARVEY & LIVESEY,
Madison, Wisconsin."

(EXHIBIT C.)

CONTRACT.

"This contract made and entered into this first day of June, one thousand eight hundred and sixty-nine, between Harvey & Livesey, of Madison, in the State of Wisconsin, of the first part, and the United States, by T. J. Rodman, Lieut. Col. and Brev. Brig. Gen. U. S. A., acting under direction and by authority of the Secretary of War, for and in their behalf, of the second part, witnesseth: That the parties of the first part do hereby contract and engage with the said United States to construct the piers and abutments for the new rail and wagon bridge to be built to connect the island of Rock Island with the city of Davenport, in accordance with such plans and specifications as may be fixed by proper authority, acting for the United States. The United States to furnish stone, cement, sand, and all necessary templets required for the work, and nothing more, the stone and cement to be delivered in cars at the Government switch on the island, near the sight of the work. All masonry to be first-class bridge masonry, in regular courses, the bond to be good. All the face stone to be laid alternately as headers and stretchers, and the beds of all stone to be dressed so that there shall be no mortar bed of more than one-half (½) inch in thickness. The courses forming the cut water of the piers to be smoothly dressed on their exposed faces, and the remainder roughly dressed; and all courses to be securely fastened to each other, and the bottom course to the rock bed of the river, by such a system of dowelling as may be required by the proper authority in charge of the work. The character of the work to be daily inspected as it progresses, by such officer or other person as the commanding officer of the Rock Island Arsenal or other authority appointed by the United States may designate. Such inspector to have full authority to give any direction with regard to the character or manner of conducting the work. The whole work to be completed prior to the first day of December next, provided that the stone shall be delivered at the rate of 2,000 cubic yards per month; and in case of any failure on the part of the United States to deliver this amount of stone, then the work to be completed as soon after the first day of December next as practicable. It is further stipulated, that all cars bringing stone and cement shall be unloaded without unnecessary delay.

All this work to be executed by the said parties of the first part; and all claims under this contract, if transferred to another party, are to be, by such transfer, forfeited, saving the rights of the United States. Payments in such funds as the Treasury Department may provide, at the rate of thirteen (13) dollars per cubic yard for all masonry in the draw pier, and at the rate of eleven (11) dollars per cubic yard for all other masonry. The masonry to be measured by taking the cubical contents of the finished work, excluding all technical and constructive measurement. Payments to be made monthly on the amount of work done during the month, when funds are on hand.

And the said parties of the first part do further engage and contract, that no member of Congress, officer of the army, or any agent of the military service, or other person forbidden by law so to do, is or shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon.

And it is hereby expressly provided, and this contract is upon the express condition that if any such member of Congress, officer of the army, or other person above named, *is or shall* be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall in any respect fail to perform this contract on their part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred.

It is further stipulated and agreed, that if any default shall be made by the parties of the first part in the performance of their work specified in this contract of the quality, and at the times and places therein provided, that then in that case the United States shall have the right to take entire and exclusive charge of the work and to complete it in accordance with the conditions prescribed in this contract, charging us with the entire cost of completing it, and crediting us with the amount per cubic yard heretofore stipulated to be paid us for the completing of the work.

The said ——— ——— shall indemnify the United States, and all persons acting under them, for all liability on account of any patent rights heretofore granted by the United States, and in case of overwhelming and unforeseen accidents by fire or otherwise, the circumstances shall be taken into equitable consideration by the United States before claiming forfeiture for non-delivery at the times specified.

And the United States do hereby contract and engage with the said parties of the first part as follows: That for each of the articles herein contracted for which shall be delivered, inspected, and approved as aforesaid, there shall be paid in the funds aforesaid to the said Harvey & Livesey, the covenantors, their heirs, executors or administrators, on bills in triplicate made in approved form and duly authenticated by the proper officers of the Ordnance Department, the sums heretofore specified, retaining ten per cent. on each partial payment until the completion of the contract

(Signed.) JAMES W. HARVEY, [L. S.]
JAMES LIVESEY, [L. S.]
T. J. RODMAN, [L. S.]
Lt. Col. of Ordnance, Brev. Brig. Gen.

Signed, sealed and delivered in presence of
(Signed.) GEORGE C. RUSSELL,
JAMES M. BEARDSLEY,
JOS. WALTERS.

(Stamp.) Approved,
T. G. TREDWELL,
Brev. Lt. Col. and Maj. of Ordnance in charge.

Traverse.—Filed Feb. 11, 1871.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimants herein, and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimants in the said sum of two hundred thousand and four hundred dollars ($200,400.00), the said defendants say that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

THOMAS H. TALBOT,
Ass't Att'y-General.

Amendment to Petition.—Filed December 17, 1872.

And now come the said plaintiffs and move the court here, for leave to amend their said petition as follows, to wit:

1. By inserting in lieu of the words "fifty-two thousand eight hundred dollars," where they first appear in said petition (page 4 printed copy), the words eighty-two thousand dollars.

2. By inserting in lieu of the item numbered 5 in said petition the following—

For handling, cutting, preparing, and setting stone for and in the piers and abutments $82,000 00

JAMES W. HARVEY,
JAMES LIVESEY.

ENOCH TOTTEN,
Counsel for Plaintiffs.

Counter-Claim.—Filed January 6, 1873.

The defendants come, and, in addition to the answer heretofore filed herein, say that the claimants are indebted to the said defendants in the sum of $33,681.35, upon the following causes of action:

One of the provisions of the contract made between the claimants and the United States, dated June 1, 1869, (which contract is set forth in the said claimants' petition and evidence,) is as follows:

"It is further stipulated and agreed that, if any default shall be

made by the parties of the first part in the performance of their work specified in this contract, of the quality, and at the times and places therein provided, and then, in that case, the United States shall have the right to take entire and exclusive charge of the work and to complete it in accordance with the conditions prescribed in this contract, charging us with the entire cost of completing it, and crediting us with the amount per cubic yard heretofore stipulated to be paid us for the completion of the work."

Under this, the said claimants having been in default, greatly to the detriment and injury of the United States, the United States did take charge of the work prescribed by said contract, did complete the said work, and did charge the said claimants with the entire cost of completing the work, in accordance with the conditions prescribed in the contract, viz., $142,457.17, and did credit the said claimants with the amount per cubic yard stipulated in the contract to be paid the said claimants for the completion of the work, viz., $108,775.82, leaving a balance due the United States from the claimants of $33,681.35, which remains wholly unpaid; and under the said provision of the contract the claimants became, and are, indebted to the United States in the said sum of $33,681.35. Wherefore, the United States ask judgment for the said sum of $33,681.35.

WILLIAM McMICHAEL,
Assistant Attorney-General.

EVIDENCE FOR CLAIMANTS.

Order on War Department for papers.

And now come the plaintiffs, by their attorney, Enoch Totten, and move the court here for an order on the Hon. Secretary of War for copies of the following papers and documents, to wit:

1st. The advertisement for proposals for the construction of piers and abutments of the bridge from Rock Island to Davenport, dated May 12, 1869.

2d. Letter from Harvey & Livesey to General Warren, requesting the United States to construct coffer-dams, &c., received by General Warren about the 13th September, 1869.

3d. Protest of Harvey & Livesey, dated 1st September, 1869, addressed to General G. K. Warren, together with General Warren's endorsements thereon, made the same day.

4th. Letter of Chief Engineer of the Army, dated September 23, 1870, to the officer in charge of the bridge, complaining of tardiness in the work.

5th. Letter signed by Harvey & Livesey, addressed to J. M. Macomb, Col., &c., dated October 7, 1870, in answer to said letter of October 6, 1870.

6th. Letter signed by Harvey & Livesey, addressed to J. M. Ma-

comb, Col. &c., dated Rock Island, October 8, 1870, offering to sell, &c.

7th. Protest signed by Harvey & Livesey, dated October 8, 1870.

8th. Letter without date delivered to J. M. Macomb, Col., &c., about the 8th day of October, 1870, signed by Harvey & Livesey' complaining of the reductions made in the quantity of the work, and claiming an allowance therefor.

9th. Bond for the performance of the contract.

10th. Letter written by Harvey & Livesey to J. A. Rawlins, Secretary of War, dated July 28, 1869.

11th. Letter of Harvey & Livesey, dated 26th April, 1870, addressed to the Hon. Hiram Price, and by him sent to War Department; also letter of Price sent therewith.

12th. Petition of plaintiffs to Secretary of War, dated January, 1870.

13th. Letter written by Gen. A. A. Humphreys, Chief Engineer, to Gen. G. K. Warren, dated January 31, 1870, relating to said bridge.

14th. Plans and specifications for the piers and abutments of said bridge, as first designed.

15th. Plans and specifications of the same as actually constructed.

16th. Bid of Messrs. Saultpaugh, Reynolds & Co., for building said piers and abutments.

17th. Bid of Messrs. Harvey & Livesey for the same.

ENOCH TOTTEN,
Attorney for claimants.

Allowed, filed and issued, February 3, 1871.

Reply of War Department.—Filed April 8, 1871.

WAR DEPARTMENT,
Washington, City, April 6th, 1871.

To ——— ——— *Clerk of Court of Claims:*

SIR: Referring to your request of the 3d of February, 1871, for certain evidence in the case of Harvey & Livesey, No. 6284 *vs* the United States, now pending in the Court of Claims, I am instructed by the Secretary of War to transmit the accompanying duly authenticated copies of papers furnished by the Chief of Engineers, U. S. A., to whom your communication was referred, together with the report of that officer.

The rule of the Court is herewith returned as requested.

Very respectfully your obedient servant,

W. M. DUNN,
Asst. Judge Advo. Gen.

Proposals for Bridge Masonry.

Sealed proposals will be received at this arsenal up to 10 o'clock, a. m., on the 25th day of May, 1869, for the construction of the piers and abutments of the railroad and wagon-road bridge to be built to connect the island of Rock Island with the city of Davenport.

It is proposed to build, say five common piers, one draw pier and two abutments; the stone and cement required for the work will be furnished on railroad cars on arsenal switch near the island and of the proposed bridge, and the sand required for the cement will be furnished by the U. S. at or near the same point.

All masonry must be of the best quality of bridge masonry; the stones in each course must be well loaded and each course well secured by dowels to the course below under cut water, and at lower end of piers, and the foundation course must be fairly bedded and well secured to the rock bed of the river.

The work, as it progresses, being subject to the inspection and approval of the commanding officer of the arsenal, or such other officer or person as may be designated by proper authority.

Detailed information with regard to the general form and dimensions of the piers and abutments, and a profile of bed of river, can be obtained by personal application at the arsenal.

The total amount of masonry is estimated at about 10,000 cubic yards; all the piers and abutments will be required to be completed prior to the first day of December, 1869.

Parties making bids will state the price per cubic yard of solid masonry, at which they are willing to complete the work, the U. S. furnishing the stone, cement, and sand as above stipulated, and nothing more.

They will also make a bid, stating separately the price per cubic yard of solid masonry at which they will undertake to build the piers and abutments, the U. S. furnishing stone, cement, and sand as above, and the price at which they will agree to put in the necessary coffer dams, with their protections.

Proposals will be indorsed:

"Proposals for Bridge Masonry," and addressed to the undersigned.

The U. S. reserves the right to reject any bid not deemed satisfactory.

(Signed,) T. J. RODMAN,
Lt. Col. Ord. and Bvt. Brig. Genl. U. S. A. Comd'g.

(A true copy,)
(Signed.) CLIFTON COMLY,
Captain of Ordnance.

(A true copy,)
(Signed,) AMOS STICKNEY,
Captain of Engineers U. S. A.

OFFICE CHIEF OF ENGINEERS,
Washington, D. C., April 3, 1871.

The above is a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

Contractors request Defendants to construct coffer dams, &c.

To BVT. MAJ. GEN. G. K. WARREN,
Major of Engineers, U. S. A.

SIR: Not waiving any damages the undersigned may have suffered, by reason of the delay on the part of the United States, we are now ready to construct the piers and abutments for the new rail and wagon bridge, to be built to connect the island of Rock Island with the city of Davenport, under the contract entered into by the United States on the one part, and the undersigned of the other part, dated the first day of June, one thousand eight hundred and sixty-nine. And we hereby request that the United States shall forthwith construct the requisite coffer dams, exhaust the water therefrom, and prepare the bed for said piers and abutments where necessary, for the commencement of said work.

Very respectfully, yours, &c.,
(Signed) HARVEY & LIVESEY.
September 13th, 1869.

(A true copy.)
(Signed) AMOS STICKNEY,
Capt. of Engrs. U. S. A.

The above is a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

Office Chief of Engrs., April 3, 1871.

Protest of Contractors and indorsement of Gen. Warren thereon.

To BVT. BRIG. GEN. G. K. WARREN,
Major of Engineers, U. S. A.

SIR: Whereas the undersigned claim that, under the contract entered into by the United States on the one part, and the undersigned of the other part, dated the first day of June, one thousand eight hundred and sixty-nine, to construct the piers and abutments for the new rail and wagon bridge, to be built to connect the island of Rock Island with the city of Davenport, the United States are obliged to build the requisite coffer-dams, pump the water therefrom and prepare the beds, where necessary, for said piers and abutments; and

whereas on the 13th day of September, A. D., 1869, we made demand in writing on the United States to build said dams, pump the water therefrom, and prepare said beds; and whereas the United States did then and there in writing, on the 14th day of September, refuse either to build said dams, pump the water therefrom, or prepare said beds:

Now, therefore, we do hereby protest against such refusal of the United States to build said dams, and pump the water therefrom and prepare said beds, and do hereby notify the United States that we shall proceed at once to build said dams, pump the water therefrom, and prepare said beds, and shall hold the United States for the payment of the costs and expense of the same.

Dated the 15th day of September, A. D., 1869.

Very respectfully, yours,

(Signed,) HARVEY & LIVESEY.

(A true copy,) AMOS STICKNEY,
Capt. of Engrs. U. S. A.

(Endorsement on the duplicate:)

Received this 15th day of September, A. D., 1869, the original whereof this is a copy:

And in order not to delay the work I consent to the work going on until the matter can be referred to the United States Attorney-General; but in this consent it must be considered that nothing is admitted in favor of the claim of the contractors to their interpretation of the contract.

(Signed,) G. K. WARREN,
Maj. Engrs. and Bvt. Maj. Genl. U. S. A.,
in charge construction Rock Island Bridge.

OFFICE CHIEF OF ENGINEERS,
Washington, D. C., April 3, 1871.

The above is a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

Letter of contractors declining to give up contract.

J. M. MACOMB,
Col. of Eng'rs U. S. Army, in charge of Rock Island bridge.

DEAR SIR: In answer to your communication of October 6th, 1870, we have to reply, that we are advised by counsel, that by surrendering the work of constructing the masonry of the Rock Island bridge under said request, a question might arise on account of the peculiar wording of said writing, wherein you say: "In view of the requirement, I have to inform you that I will take the

work as it stands and carry it on under the provision of the contract which contemplates such change," as to whether or not we do not voluntarily surrender the same, and we therefore have to decline the surrender. If the Government takes possession it must be, as it is, against our assent and with our protest.

For, aside from completing said work within the time specified in said contract, to wit, December 1st, 1869, which was prevented by the United States Government, in that it refused to let us commence said work until near after that date. We have complied with all the terms and requirements of said contract, and we do not now understand that the Government undertakes to assume the completion of said work by reason of our failing to place the masonry where directed, or because that the work is not done in the manner provided in said contract, which are the only causes remaining that would authorize the Government to assume the completion thereof, but only because of some complaints of tardy progress of the work. We therefore deny the right of the Government to assume said work, and shall relinquish it only when notified by the Government that it has taken possession thereof.

(Signed) HARVEY & LIVESEY.

OCTOBER 7, 1870.

(A true copy,)
(Signed) AMOS STICKNEY,
Capt. of Eng'rs, U. S. A.

I certify that the above is a true copy from the records of this office.

JNO. PARKER,
Major of Engineers.

OFFICE CHIEF OF ENG'RS, *April 3, 1871.*

Offer of contractors to sell tools, &c.

ROCK ISLAND, ILL., *Oct. 8th, 1870.*

Col. J. N. MACOMB,
Col. Eng'r Corps, U. S. A., in charge of construction of the Rock Island bridge, Ill.

DEAR SIR: That there may be no misunderstanding as regards our position in relation to our machinery, boats, &c., used by us in constructing the masonry in the piers and abutments of the Rock Island bridge, we would say, that we are ready and willing to sell them to the U. S. Government at a fair valuation, that to be ascertained by competent judges of such property.

Very truly, your obedient servants,
(Signed) HARVEY & LIVESEY.

(A true copy.)
(Signed) AMOS STICKNEY,
Capt. of Eng'rs U. S. A.

OFFICE OF CHIEF OF ENG'RS, *Feb'y 25, 1871.*
I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

Protest of Harvey and Livesey.

TO ALL WHOM IT MAY CONCERN:

Know ye that whereas, on the first day of June, A. D. 1869, the United States entered into an instrument of contract in duplicate, of that date, with the undersigned, for the construction of the piers and abutments for the new railroad and wagon bridge to be built, to connect the island of Rock Island with the city of Davenport, in the State of Iowa, and agreed to furnish stone, cement, sand, and all necessary templets required therefor, which work was to be completed by the 1st day of December then following (reference is hereby made to said contract for full particulars of the terms and conditions thereof);

And whereas, in order to complete said work within the specified time, it was necessary to commence the same immediately on the execution of said contract, as the undersigned had the right to do, and to prosecute the labor with all due dispatch;

And whereas it was further necessary that the undersigned should not be delayed by the United States, by any failure to furnish said materials or designate the location of said piers and abutments, or in any manner whatever;

And whereas said contract further provides that, in case of overwhelming and unforeseen accidents by fire or otherwise, the circumstances shall be taken into equitable consideration by the United States before claiming forfeiture for non-performance of said contract on the part of the undersigned;

And whereas the United States, by positive order, of date July 22d, 1869, stopped all work under said contract until further instructions;

And whereas the instructions to renew the work were not given until August 23d, 1869, whereby a great portion of the most feasible time of the season for prosecuting the work was lost;

And whereas the United States did not, and have not, at any time constructed the coffer-dams and prepared the beds for the construction of said piers and abutments, as they were in right and equity bound to do, but, on the contrary, by their neglect in that regard, compelled the undersigned to construct said dams and prepare said beds, which they did under protest, and by reason thereof caused great delay in the prosecution of said work;

And whereas the United States have at no time given the location of said piers and abutments in due time, as bound in good faith and equity to do, so that the work could be prosecuted to advantage by carrying on that portion thereof not interfered with by the water when at high stage;

And whereas at no time have the United States furnished, in advance, the stone necessary for said work, so that the same could be dressed and used to advantage in the prosecution of said work; but on the contrary, from the want of the same, have caused the undersigned to work to great disadvantage, in not being able to keep the workmen employed, and in being obliged to lay only a portion of each course; and finally to defer the completion, for the time being, of the abutments and some of the piers now being erected, and thereby have caused great delay in the work and unnecessary expense;

And whereas the United States did not allow the undersigned to prosecute the work until the end of the season in the year A. D. 1869, but on the contrary, long before its close; to wit: on, or about, the 11th day of November of said year, and while the work could have been carried on to advantage, stopped the same, being out of cement;

And whereas during the present season, while the work was being duly prosecuted, to wit: on or about the 12th day of September, A. D. 1870, an unusual rise took place in the river, of seven and one-fourth feet, and one of the coffer dams, which had been duly constructed under supervision of the officer of the United States having charge of superintending said work, and without fault or negligence of the undersigned, was swept away, whereby the completion of the work was greatly delayed. Said accident was unforeseen, in that the occurrence of a rise in the river at that season of the year is very unusual, and, in fact, never known before, so far as has come to the knowledge of the undersigned;

And whereas by an error of five (5) feet, made by the United States, in the soundings of the river at the point of the location of the pier numbered two, from the Iowa side, in the depth of the earth to be excavated before reaching the rock, much more labor and time has been, necessarily, expended in preparing said bed than was, or could be, anticipated when making said contract, and thereby the time of completing said work proportionably protracted;

And whereas notwithstanding all of the delays caused by the United States, as aforesaid, and by said unforeseen accident in the completion of the said work, and the fact that the undersigned were prosecuting the same with all due and reasonable dispatch, the United States, induced thereto by parties illy advised or badly disposed, and without a thorough investigation of the pretended grounds of complaint although challenged thereto by the undersigned, and without any well-founded reason therefor, and against the will and in violation of the rights of the undersigned to carry on said work to its completion, did, on the 8th day of October, A. D. 1870, take possession of said work, and now threaten to carry on the same

to completion at the expense and cost of the undersigned, to be credited on said contract:

And whereas the expense of such completion will, of necessity, be very much enhanced by such change, for the reason that the workmen being under charge of no persons interested in having the work done in the shortest possible time, or for the want of proper instructions, are not urged forward as they otherwise would be, but permitted to idle away their time; and for the further reason that, those having charge of the work under the United States refuse to take and use the machinery of the undersigned, being the most approved for the service required, and put up at great expense, but on the contrary changed to other and that less adapted to the work, which causes great additional expense and loss of much valuable time;

And whereas all such acts and doings of the United States are in contravention of the rights of the undersigned, under said contract, and in violation of the plain provisions thereof, and unjust and inequitable, and against the best interests of all parties concerned;

Now, therefore, we, the undersigned, do hereby protest against all the said acts and doings of the United States, as well those of omission as commission, and demand that we be permitted to carry out the said contract and prosecute the said work to its completion; and that in default thereof we shall hold the United States for all damages sustained.

HARVEY & LIVESEY.

Dated October 8, 1870.

[50-cent revenue stamp.]

BOND FOR PERFORMANCE OF CONTRACT.

Know all men by these presents, that we, James W. Harvey and James Livesey, of Madison, in the State of Wisconsin, as principals, and Samuel Klanber, Alexander Findley, and James H. Hill, all of Madison, in the State of Wisconsin, as sureties, are held and firmly bound unto the United States of America in the penal sum of sixty thousand dollars, to be paid to the said United States or their certain attorney, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 1st day of June, A. D. 1869.

Whereas the above bounden James W. Harvey and James Livesey entered into the contract with the United States set forth in the foregoing covenant;

Now, therefore, the conditions of this obligation are such that, if the said Harvey & Livesey, heirs, executors, or administrators, shall well and faithfully fulfill each and every one of the aforesaid cove-

nants, this obligation to be null and void; otherwise, to be and remain in full force and virtue.

(Signed)	JAMES W. HARVEY.	[SEAL.]
(Signed)	JAMES LIVESEY.	[SEAL.]
(Signed)	SAMUEL KLANBER.	[SEAL.]
(Signed)	ALEXANDER FINDLEY.	[SEAL.]
(Signed)	JAMES H. HILL.	[SEAL.]

OFFICE CHIEF OF ENGINEERS, *February 25, 1871.*

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

Letter of contractors complaining of delays.

ROCK ISLAND, ILL., *July 28, 1869.*

Hon. JOHN A. RAWLINGS,
Secretary of War, Washington, D. C.

DEAR SIR: On the 1st of June last, we entered into a contract with the United States through Gen'l Rodman, at Rock Island, Ill., to construct piers and abutments for a railroad and wagon bridge across the Mississippi River, to connect the city of Rock Island, Ill., with the city of Davenport, Iowa; the same to be done according to advertisement and profile of the river, reference being made as to class of masonry to the wagon bridge connecting the island of Rock Island with the city of Rock Island, Ill. That up to the 22d of July last we have received about 2,000 yards of stone and have cut and prepared about 600 yards of the same, ready to be placed in the work, at which time we received orders from Gen'l G. K. Warren, of the Engineer Department, to suspend all work until further orders.

That at that time we had already expended in machinery and necessary implements, consisting of steam-boat, flat boats, derrick boats, derricks, and other machinery, an amount equal to $20,000, besides the expense incurred in receiving and preparing stone, amounting to some $5,000.

That in consequence of this suspension of the work and the delay heretofore experienced,—for we have never had any instructions as to the location and form of piers to be constructed,—we are being greatly damaged, both financially (for had the work progressed as it should and was expected to have done, our capital would have been sufficient to keep up the work in the course of its construction,) as well as to the matter of time, in which the work was by the terms of the contract, (December 1st, 1869,) to be completed.

This delay will throw the work into an unfavorable season of the year, and into short days and inclement weather, and will materially affect the labor and expense.

We have, by this suspension, been compelled to discharge our men,

some 60 in number, many of whom were selected particularly for their skill as mechanics and their known value as workmen.

We would respectfully ask that such instructions may be given to the officer in charge of the work as will cause an early resumption of the work, so that we may be able to complete our contract in accordance with its terms and spirit.

We are, very respectfully, your obedient servants,

(Signed) HARVEY & LIVESEY,

OFFICE CHIEF OF ENGINEERS, *February 25, 1871.*

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

Estimate of cost of bridge.

1. Estimated cost of a bridge shown in plan 1, wide enough for double railroad track and high enough for wagon-road above:

MASONRY.

5 piers, 2 abutments, and draw-pier, 11,798.45 yds., *a* $24	$283,163
Walls C and C' at both ends, 4,665 yds., *a* $24	111,960
Earth embankments, plan 1, 62,804 yds., *a* 50 c	31,402
Timbers in draw-pier	8,000
Superstructure	800,000
Total	1,234,525
Deduct half cost of superstructure	400,000
Net cost to the U. S	$834,525

2. Same bridge, only wide enough for single track.

MASONRY.

5 piers, 2 abutments, and draw-pier, 9,557.01 cubic yds., *a* $24	229,368
Wall C and C' at both ends, 4,655 c. yds., *a* $24.	111,960
Earth embankment, plan 1, 57,514 c. yds., *a* 50 c	28,757
Timbers in draw-pier	8,000
Superstructure	600,000
Total	777,085
Deduct half cost of superstructure	300,000
Net cost to the U. S	$678,085

3. Bridge as in plan 2, with wagon-road below, single-track railroad.

MASONRY.

5 piers, 2 abutments, and 1 draw-pier, 9,557.01 yds., *a* $24	229,368
Earth embankment on Iowa shore, 1,346.96 yds., *a* 50 cts.	673
Timbers in draw pier	8,000
Superstructure	600,000
Extra charge to Chicago, Rock Island and Pacific Railroad, by placing railroad above wagon road, as estimated by the Chief Engineer of the C., R. I. and P. R. R	96,250
Total	934,291
Deduct half cost of superstructure	300,000
Net cost to the U. S	634,291

Difference in cost to the United States of single tract bridge, and wagon road approaches between bridge with wagon road above, and that with wagon road below railroad track and in favor of wagon road below, $43,794.

(A true copy.)

(Signed) T. J. RODMAN,
Bvt. Brig. Gen. U. S. A.

(A true copy,)

AMOS STICKNEY,
Capt. Engrs. U. S. A.

SPECIFICATIONS FOR THE MASONRY FOR THE ROCK ISLAND BRIDGE.

All piers and abutments will be placed upon the solid rock bed of the river, and connected therewith by such a system of dowels as may be indicated by the officer in charge.

The masonry will be rock ranged work, the joints in front and for (12) twelve inches back from the face are to be hammer dressed, or cut to three-eighth ($\frac{3}{8}$) inch joint, and the beds to be cut not to excel one-half ($\frac{1}{2}$) inch.

The interior vertical joints not to be more than one inch.

Each course to be made uniform in thickness throughout; and no course to be less than twelve (12) inches thick.

The heaviest and thickest courses to be laid in the lower portion of the peirs and abutments, diminishing in thickness as may be directed by the officer in charge.

In the up-stream starling the face of the stone shall be hammer-

dressed; and each stone shall be cut and laid in accordance with the plans in this office.

The face of the stone in each course, except as above mentioned, will be generally left as they come from the quarry; unless the projections exceed (2) two inches, in which case they shall be roughly scabbled down to that limit.

The stretchers shall in no case have less than two feet bed.

The headers shall in no case be less than (4) four feet long and (2) two feet wide; and there shall not be less than one header to each (8) eight feet lineal of the face wall on each side, and the headers in the same course one side shall be placed between headers in the same course on the other side, and so arranged that a header in a superior course shall be placed between two headers in the course below; and no stone shall be used in the interior of the wall having less than (4) four feet surface face.

No vertical joint in a superior course shall be less than one foot from the vertical joint in the course below.

All the interior of the piers and abutments not occupied by solid stone shall be filled with good concrete, and the entire work be well grouted.

All mortar and concrete used in the piers and abutments shall be mixed and applied as may be directed by the officer in charge.

The piers and abutments will be built of solid masonry, and in accordance with the plans in this office.

The entire work must be done in the most permanent and workmanlike manner, and to the satisfaction and acceptance of the officer in charge.

(Signed) AMOS STICKNEY,
Capt. of Eng'rs, Bvt. Maj. U. S. A.

(A true copy.)

AMOS STICKNEY,
Capt. of Eng'rs, U. S. A.

Proposal of Reynolds, Saulpaugh & Co.

REYNOLDS, SAULPAUGH & CO.,
General Contractors in Masonry, Grading, Bridging, &c.,
ROCK ISLAND, ILL., *May 25, 1869.*

Brig.-Gen'l T. J. RODMAN,
Com'd'g Rock Island Arsenal.

SIR: We respectfully propose to build your piers and abutments for the rail and wagon road bridge between the island of Rock Island and the city of Davenport, in accordance with the terms of your advertisement of May 12, 1869, at prices as follows:

Solid masonry at $19.10 per cubic yard in the work complete, the United States furnishing the stone, cement, and sand, as stipulated, and nothing more. This price is based on 10,000 cubic yards of masonry in the work when completed. Or, as per your second plan, at prices as follows:

Solid masonry at $12.70 per cubic yard in the work complete, the United States furnishing the stone, cement, and sand as above, and build the coffer-dams at prices as follows:

For pier No. 1, dam 18 feet high		$7,800
For " 2, " 15 "		34,900
For " 3, " 13 "		6,000
For " 4, 5, & 6, 12 "		15,000
		$63,700

The above prices for dams includes the protections to the same, complete.

Respectfully yours,

(Signed) REYNOLDS, SAULPAUGH & CO.

(A true copy,)
(Signed) AMOS STICKNEY,
Capt. Engrs. U. S. A.

(A true copy,)
(Signed) CLIFTON COMLY,
Captain of Ordnance.

OFFICE CHIEF OF ENGINEERS, *February 27, 1871.*

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

Proposal of Harvey & Livesey.

ROCK ISLAND, *May 25, 1869.*

We propose to build the masonry of piers and abutments of the Rock Island bridge, as per annexed statement:

Small piers and abutments per yard	$11 00
Draw pier	13 00

(Signed) HARVEY & LIVESEY,
Madison, Wisconsin.

(A true copy,)
(Signed) AMOS STICKNEY,
Capt. Engrs. U. S. A.

(A true copy,)
(Signed) CLIFTON COMLY,
Captain of Ordnance.

OFFICE CHIEF OF ENGINEERS, *February 27, 1871.*

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Captain of Ordnance.

[NOTE BY THE CLERK.—The letter of John G. Parke to J. N. Macomb, of Sept. 23, 1870; of Harvey & Livesey, to Col. Macomb, Sept. 20, 1870; of Harvey & Livesey to Hon. Hiram Price, April 26, 1870; of Hon. H. Price to the Secretary of War, April 26, 1870; the petition of James U. Harvey to the Secretary of War, January 17, 1870, and the letter of Genl. A. A. Humphreys to Genl. G. K. Warren, January 31, 1870, all being parts of the above reply to the Secretary of War to the order of this court, are omitted from this record, as per stipulation of counsel for claimants and defendants, filed in the clerk's office of the Court of Claims, June 8, 1878.]

JOHN RANDOLPH,
Asst. Clk. Ct. of Claims.

TESTIMONY FOR CLAIMANTS.

Deposition of William Weston for claimant, taken at Rock Island, Ill., February 3d, 1871.

WILLIAM WESTON being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimants or either of them.

Answer. My name is William Weston; 28 years of age; civil engineer in the employ of the United States Government, at St. Paul, Minnesota, Le Claire, Iowa, and Rock Island, Illinois; have no interest, direct or indirect, in the said claim; not related to either of the claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

I am assistant civil engineer in connection with the building of the Rock Island bridge for the Government. Colonel J. N. Macomb has general charge of these works on behalf of the Government, and Major Amos Stickney has special charge of the building and masonry work.

I commenced my services as such civil engineer in the last week of July, A. D. 1869.

I do not recollect the date when I got out and gave to the contractors the patterns for the corners for the Iowa shore abutments, but think it was in August or September, A. D. 1869. I do not know whether it was on the 4th day of September, A. D. 1869. I have no record of it. They were patterns, I should think, from three to six feet long, giving the end joint from nine to eighteen or twenty inches. I don't know that there was a pattern for the Iowa abutments eighteen inches. I don't know that there was a pattern

of fifteen inches. I never measured a joint or any pattern, to my recollection. I think the patterns given were sufficient to give an end-joint of four feet for the work required.

Int. Were the contractors, by the terms of the contract, required that no mortar bed should be of more than one-half in thickness?

(Objected to by J. B. Leak, attorney for the Government, as incompetent proof of the contents of a written instrument.)

Ans. As I understood it, they were.

Int. Would not so short an end joint as mentioned by you require a great deal of extra expense on the part of contractors to get a correct line of the end joint of four feet?

(Objected to by attorney for Government as immaterial.)

Ans. I think it would, in most cases, if such line was required on any stone cut by these patterns. I think it would require some extra expense.

I think the length of the headers was required to be not less than four feet long. I recollect about the patterns I gave to the contractors for the starling of number one pier, and the length of the joint. Mr. Harvey, one of the claimants, said to me more than once that these patterns were hardly sufficient for the purposes required. Mr. Livesey, the other claimant, did make some wood templets or patterns to change stone that had been already cut to change starling of number one pier, and probably to cut others by, in the shape Major Stickney required. I don't know that Mr. Livesey made those patterns for the reason those furnished by the Government were not proper for the work required.

Int. Did any of the officers in charge on contract of this work ever furnish the contractors with wood templets or patterns for pier number one or any other of the small piers, with exception of the patterns for the coping?

Ans. I gave a few wood patterns for part of pier number one, and for no other pier. No other officer, to my knowledge, gave them wooden patterns.

Int. Do you know whether, by the terms of the contract, the Government were to furnish all necessary templets for the work?

(Objected to by attorney for Government, for the reason question calls for oral evidence of a written instrument.)

Ans. As I understand it, I think the Government were to furnish them.

We did not, in 1869, have a full-sized draft-board of any work in connection with the bridge. I recollect that, in 1869, Mr. Harvey, and may be Mr. Livesey also, saying to me that we ought to have a draft-board the full size to mark out the starling of the piers. I did lay down part of the starling in half size on the old floor in the old house on the island.

Int. Did not claimants often joke and laugh at the idea of the Government adopting such an unusual draft-board to get lines to masonry or circular work in masonry?

(Objected to by attorney for Government, for the reason the inquiry is immaterial.)

Ans. They did.

Int. Is it customary in masonry of circle upon circle or battered circle, to lay the work down in full size to get the patterns or templets from it, so as to be able to work properly?

Ans. It is, I think.

Mr. Livesey, in A. D. 1869, did make a draft-board of some of the courses of the starlings in full size, so as to enable the contractors to do the work properly.

Int. Did you, in the spring of 1870, after repeated suggestions of the contractors, make a draft-board of full size?

Ans. I did make one in the spring. I cannot say that it was after their repeated suggestions.

I do not know that there were any complaints from the contractors after in regard to getting the proper lines, but the contractors made suggestions after, that the Government ought to have some person to give them the proper bevels as taken from the board. The Government did not, after that, furnish a man for that purpose. Mr. Whitten, in the employ of the Government, might have assisted in giving these bevels.

I recollect that some monument stones were obtained from the contractors for the points of survey on land marks. I do not know that the contractors were ever paid for the cutting of said monument stones. I do know of the contractors cutting a block of stone one foot cube for test of weight of stone per cubic foot used in piers. I do not know whether or not they were paid for that. I know that the corners of the Iowa shore abutment were dressed off by contractors. I do not know at whose request this was done. I do know that all the coping of all the piers was smoothly dressed on the top bed. I do not know whether the contractors have been paid for this work.

Int. Do you know of the margin draft of the two corner abutments, one on the Iowa side and the other on the Island, being ordered as an extra by Major Stickney?

Ans. I think they were so ordered.

I have heard price per foot of margin draft, but do not remember price per foot. I do not know that the contractors were paid for 1559 feet of this work last October. I do not know if that quantity of stone was set in the abutment before the first of October last. I do not know the number of feet so cut altogether. I do not know whether the contractors have been paid in full for what they cut.

Int. Do you know of the contractors having had the stones in the noses of the break-waters or starlings and cut waters of the pier, drilled for doweling?

Ans. I do, some of them. I do not know how many lineal feet of drilling or drill holes in stones unset, when the Government took charge. There was, I think, some. I do not know that the contractors have even been paid for them. I do know that the stones

of the cut water of the piers more than two feet below low water, were dressed. I do not know how many superficial feet so dressed, and I do not know whether the contractors were ever paid for it.

Int. Do you know of Major Stickney hiring and using the contractors' pump or pumps, engine and boiler and boat?

Ans. I know that their pumping machinery was used after they gave up the work; I cannot tell number of days so used. I do not know whether contractors were paid for it. I have the record of the water-gauge for the Mississippi river at Rock Island for the years 1869 and 1870.

Int. Give me from that record the number of days between the 4th of September, A. D, 1869, and the 26th day of November, A. D. 1869, when the contractors stopped work for the reason in which the river at this point was less than four feet above low-water.

Ans. There were two morning readings of the gauge, November 25th and 26th, when the river was below four feet above low water, and these were the only dates showing this; the highest stage during this period was on the tenth of October, the gauge reading 12.20 feet above low water.

Int. Give me from the record the number of days between the first day of April, 1870, when the contractors resumed work, and the eighth day of October, A. D., 1870, when the Government took charge of the work, in which the river was less at this point than four feet above low water.

Ans. Fifty-five days. The 25th of April, 1870, it was 16.15 feet above low water. On the 8th of October, when Government took charge of the work, it was 4.6 feet in morning, and 4.65 in evening, above low water. The masonry work on the bridge stopped about December 13th last.

Int. Give me from the record the number of days between October 18th, A. D. 1870, and the 13th day of December, when the Government ceased work for the season in which river at this point was less than four feet above low water?

Ans. Fifty days. On the 23d of September, A. D. 1870, the river was, in the morning, six and three-tenths feet, and in the evening, six and two-tenths feet above low water.

Int. You have said that the contractors had fifty-five days, when the river at this point was less than four feet above low water, to work in the river. How many yards of stone did they lay in the piers and abutments in that time?

Ans. I do not know. The official record of it is in the custody or control of Major Stickney.

Int. You say that the Government had fifty days in which to work when the river at this point was less than four feet above low water mark. During the entire time they had charge of the work, how many yards of stone did they lay in the piers and abutments during that time?

Ans. I do not know. The official record of it is in the custody or control of Major Stickney.

Int. At the time the Government took charge of the work, had not the contractors built the coffer dams of pier number two, got their traveler up, the counter dam partially built inside (the contractors having found it requisite to go an extra depth of four or five feet through sand, gravel, and loose rocks, such extra depth not being expected from the surroundings given by the engineers, as the bottom of the river), and the upper part of the pier ready to lay stone in?

Ans. They had the dam built, traveler up, a counter dam started, and the bottom exposed at one point at upper end of dam, but not sufficiently to permit the commencement of laying of stone to advantage; there was a depth of sand, gravel, and loose rocks more than was to be expected from the soundings given by the engineers.

At the hour of one o'clock, p. m., of the second day of February, A. D. 1871, suspended the taking of the deposition of the foregoing witness, and took the deposition of Manuel Talcott at the hour of five o'clock, p. m., of same day, at which hour I resumed the taking of the deposition of said witness, William Weston.

Int. Was there sufficient rock exposed, with a little bailing of water, to begin laying stone, considering the difficulty of working in such a situation?

Ans. I took no notice of the state of the work at that time. My opinion on this point I stated in my answer to the last interrogatory. I think contractors had, at time Government took charge of dam number four, pier built and a portion of the traveller-frame up. They had done something towards putting in stone crib of pier number five; I don't know how much; I think they had stone cribs and breakwater in for the upper rest of the draw-pier.

Int. Had the contractors, at time Government took charge, got the dam of the upper rest all framed, one-half sunk and sheeted, and some dirt in dam?

Ans. I don't know; they had done something towards it; I could not say how much. There was some masonry laid in the upper rest of the draw-pier.

Int. At the time Government took charge, was not pier number one, the Iowa shore abutment, the pivot or middle of draw-pier, the lower rest, and the island-shore abutment all finished and accepted by the Government engineer?

Ans. The masonry of pier number one was completed; the masonry of the Iowa and island shore abutments was completed, except, perhaps, some stone to be set about the bridge. That, if the superstructure demanded it, the masonry of the middle of the draw-pier and lower rest was completed, and I think all these pieces of masonry had been accepted by the Government engineer. At the time the Government took charge, the island land abutment was finished as far as it could be, for want of coping-stone. At the time Government took charge, the Iowa land abutment was not finished as far as it could be, for want of coping-stone, for the reason that the first course, demanding a coping-stone, had not been commenced.

Int. Is it not requisite that the corners of the course be set first, and that this coping was required for the corners?

Ans. I think it is. I do not call that which is required for the corners coping—we called that stepping-stones; from my recollections of the work the bottom course of drafted stone on the Iowa land abutment is not completed, and the contractors were never ready to set up any of these stepping-stones.

Int. Is not the second course at each end the top of the wall, in the Iowa land abutment?

Ans. It is, practically.

Int. Is not the cap of the top of the wall coping?

Ans. It is. In your previous questions about coping-stones I have understood you to include these step-stones.

Int. Is the coping for either of those abutments on the ground at present time?

Ans. Not all of it. I am unable to state how much is there. There were foundations excavated for the island land and the Iowa land abutments, by the contractors. In month of May I was on board steamer Montana with General Warren. I recollect an interview at that time between General Warren and the contractors, and was present. I cannot state the conversation that took place between the general and them at that interview. I heard some of the business stated. I do not know who stated it. The contractors, in effect, stated they had come there to see about the building of the land or railroad abutments; that is all I recollect was stated about the business. General Warren, in substance, said: How do you know there are to be any land or railroad abutments to the Rock Island bridge, and did I ever tell you there were to be any such abutments? General Warren continued to inquire of them: Did any one connected with the office ever tell you there were to be such abutments? That is all I recollect. I do not recollect any reply to him from them. I recollect that General Warren used some pretty severe language, as I thought. He told Mr. Harvey, as I recollect it, that he (Harvey) had tried to deceive him (Warren), and had tried to take advantage of him, and he (Warren) knew it. I think the language was more severe than this, but I cannot give exact words. Warren then turned to Mr. Livesey and said to him: "I don't mean you, Mr. Livesey, for I think you have always used me fair and honorably"

Int. Did one of the contractors at the commencement of this interview state to General Warren that, as the water of the river was so high, they had come up to see if they could not get the land abutment of the bridge located so that they could go on to work on those abutments during the stage of high water?

Ans. I think they did.

Int. Did not General Warren reply in words to this effect: How the hell do you know that there are any abutments going there?

Ans. He did, in words to that effect. I went to Chicago about 10th or 12th of October last to buy a second-hand portable engine.

I made no inquiry about stone at Chicago. I did make inquiry about stone at Joliet, of several stone dealers. I was inquiring about face stone for bridge. I made inquiries of the contractors who had furnished the other stone for bridge. I made no inquiries for coping stone, and did make inquiries of them what stone they could furnish for the starlings. They said they could furnish them if they could get cars for rtansportation to Joliet; they further expressed themselves willing to buy all stone that I could find in such quantity ae I wanted, provided it could be purchased and delivered here at ths yard at a price not exceeding their contract price for furnishing stone. I wanted five or six hundred yards of face-work masonry. I did not go to buy it, and did not get it. I do not, necessarily, want it now. At that time I considered that quantity of stone necessary to complete the bridge. I do not think that quite that quantity will be required to finish the bridge.

Adjourned to the 3d day of February, A. D. 1871, at 9 o'clock, A. M.

At that hour, to which the taking of the foregoing deposition was adjourned, to wit, at 9 o'clock, A. M., of February the 3d, A. D. 1871, and at the place aforesaid, I resumed the taking of the deposition of William Weston.

Int. Did you keep the water-gauge for the year A. D. 1870, and that portion of the year A. D. 1869, when you were stationed at Rock Island?

Ans. I did not keep it in 1869. I did keep it in 1870, after about the 19th of June.

Int. Give me the medium stage of the river above low water, during the following months: the month of August, September, October, and the month of November up to the 26th, and the month of April, A. D. 1870, May, June, July, August, September, and the month of October to the 8th of October, A. D. 1870, from your morning readings.

Ans. In August, 1869, it was 5.01 feet; September, 7.38 feet; October, 10.52 feet; November, up to the 26th, 5.59 feet; April, 1870, 12.55 feet; May, 9.87 feet; June, 6.18 feet; July, 2.88 feet; August, 2.76 feet; September, 6.58 feet; October, to the 7th inclusive, 4.62 feet.

Int. Have you measured or computed, or had measured or computed, under your direction, the amount of masonry done by the contractors up to the 8th of October, A. D. 1870?

Ans. I have, except the masonry of the two land abutments.

Int. Give me the contents of the masonry in each pier and abutment that is finished?

Ans. In the Iowa shore abutment there are 708 cubic yards; in pier number one, 512 yards and four feet; in pivot pier, 1010 yards and ten feet; in lower rest, 488 yards and 14 feet; in upper rest, about 58 yards (estimated being under water); the Rock Island shore abutment, 818 yards and 12 feet.

Int. Can you, by referring to the documents now in court, give me the contents of the masonry of the entire work done by the contractors and the Government in the building of the Rock Island bridge?

This interrogatory withdrawn.

Int. Give me the estimated quantity done by the contractors in the Iowa land abutment and Island land abutment?

Ans. It is 561 yards, to the best of my knowledge.

At the instance of the parties engaged on the part of said claimants, and by and with the consent of J. B. Leak, attorney for the Government, I suspended the taking of this deposition, and took the deposition of Colonel J. N. Macomb, and now at the hour of 12 m., of the third day of February, resume the taking of the deposition of the witness, William Weston.

Int. You stated that there were fifty days between the 8th of October, A. D. 1870, and the 13th day of December, A. D. 1870, during which time the Government had charge of the works, when the river was at a stage of less than four feet above low water; was there a consecutive period of fifty days, without any interruption by any rise in the river, within that period?

Ans. There was.

Int. Please give me, in detail, the contents of masonry done by the Government between the 8th of October, A. D. 1870, and the 13th of December, A. D. 1870?

Ans. In pier number two, 685 and two-tenths cubic yards; in pier number three, 538 and nine-tenths cubic yards; in pier number four, 647 and two-tenths cubic yards; in upper rest of draw pier, 1205 cubic yards.

Int. Give me the depth between low water mark point of each pier and abutment?

Ans. Iowa shore abutment, it is three-tenths of a foot above low water; pier number one, 5.57 feet below; pier number two, 13 feet below; pier number three, 6.9 feet below; pier number four, 11.24 feet below; pier number five, estimated at 20 and five-tenths feet below; pivot pier, 4 and five-tenths feet below; the upper rest of draw pier, 8.76 feet; the lower rest of draw pier, 5 and eight-tenths feet; the Island shore abutment, five feet.

Int. From the answer to the last question please give me the average depth below low water to the foundations, the bottom of the five small piers?

Ans. I make it 11.44 feet.

Int. Now, give me the average depth below low water of the foundations to the bottom of the pivot pier and the upper and lower rests?

Ans. Six feet and thirty-five hundredths feet.

Int. Please give me the amount of excavation for each pier and abutment?

Ans. In pier number two, about 125 yards; in pier number four, 50 yards; the island shore abutment, about 186 yards; the island

shore abutment, none estimated, to my knowledge; the Iowa land abutment, 298 yards; the island land abutment, 138 yards; pier number five, 300 yards; the pivot pier, upper rest, and lower rests, estimated, 30 yards. I say that these are all estimates made without any direction from the engineer in charge, except at island shore abutment, and perhaps piers number two and four.

Int. Give me the amount of masonry in number five pier, when built, and quantity of masonry necessary to finish the Iowa land abutment and island land abutment.

Ans. I cannot give you the exact amount. I estimate pier number five, estimated at 20 and five-tenths feet below water. 900 yards; the Iowa land abutment, 329 yards; the island land abutment, 20 yards. These are hasty estimates.

Int. Was there between 50 and 100 yards of excavation at the Iowa-shore abutment?

Ans. There was some excavation for the wing-walls of this abutment—I think not fifty yards.

Cross-examination by J. B. Leak, attorney for Government.

The witness says:

Int. In your examination-in-chief, you have been asked a number of questions in relation to the time when templets, patterns, draft-board, &c., were made and furnished. State now whether or not all necessary templets required for the work were or were not furnished by the Government as the contractors needed them.

Ans. They were, in my opinion.

Int. In what way did or did not the want of a full-sized draft-board in 1869 of any work in connection with the bridge affect the contractors in carrying on the work?

Ans. A full size draft board was more convenient for the superintendent of stone-cutters to take the proper bevels from, and there was, probably, less liability to mistakes from the full size than from the half size board. No stone cut by the half size board, however, was wanted for any of the masonry laid in 1869.

Int. Was it necessary for the contractors to have, in order to do their work properly, this full sized draft board in addition to the templets furnished, or was it only a matter of extra convenience?

Ans. It was necessary to have some draft board, not necessary to have a full size draft board for any of the work done by them in 1869. I am quite sure that no stone was cut wrong, as to its bevels, by reason of using this board.

Int. You have said that you gave them wooden patterns for part of pier number one, and you gave for no other pier. Are patterns and templets the same thing, and why did you give no wooden patterns for other piers? Did you give patterns of other material?

Ans. Templets and patterns are same thing. I gave no other wooden patterns, because they built no other small piers; and I did not consider that wooden patterns were called for, except the small

piers, except for coping. I gave sheet-iron patterns for other piers.

Int. Did the contractors, to your knowledge, make any complaint of being delayed by reason of not having necessary patterns of any kind?

Ans. I recollect two complaints being made to me; there was some objection to the sheet-iron templets after they had used them, to the effect that they ought to be longer. They did not say that they could not use them, but only that it made a little additional trouble to the stone-cutters in applying them. All these were afterwards changed in accordance with their suggestions, that is, made longer.

Int. Upon your trip to Chicago and Joliet, after the Government took possession of the work, what was your object in inquiring for stone, as you have testified in your examination in chief?

Ans. I had been instructed to see if I could find stone suitable for bridge stone, that could be bought at a reasonable price, provided such stone should be found necessary during the season, to complete the masonry of the bridge. I had no orders to buy any stone.

Int. Why was it supposed that there was any more necessity for inquiring for this stone after the Government took possession than there was before?

Ans. I know no reason, except that it was expected that the Government would do more work in this season than the contractors would do.

Int. Did the contractors unnecessarily delay the prosecution of the work, either during the season of 1869, or of the season of 1870, or both?

Ans. I thought they worked very slow during both seasons; it seemed to me there was more delay than was necessary in the prosecution of their work.

Int. Were they at any time urged to carry on the work more rapidly; if so, by whom, when, and how often?

Ans. They were urged to get along faster with the work, by Major Stickney, the officer in charge, very often to my knowledge, in both seasons, 1869 and 1870.

Int. What excuse did they generally give for their delay?

Ans. The excuse I heard most frequently was on account of high water.

Int. Did, in your judgment, the contractors use proper diligence to protect their coffer-dams from being injured or flooded at the time of the rises in the river?

Ans. They did not, generally.

Int. Was the coffer-dam at pier number one properly protected at the time the raft went over the cribs and broke the dam?

Ans. I thought it was not.

Int. Was or was not masonry work done by the contractors done in the shallowest water in which any of the work was to be done?

Ans. It was.

Int. Was not the masonry work done by the Government done in water equal in depth to the water in which the Iowa shore abutment was done during the rise, at the time they abandoned the work at that abutment?

Ans. I do not know when they abandoned the work at that abutment.

Int. Answer the above question as if it were written during the rise of— Withdrawn.

Int. Was not work done by the Government in greater depth of water than the depth of water at the Iowa shore abutment at the highest point of the rise in October, 1869, previous to which the contractors had abandoned work at that abutment on account of the rise?

Ans. I find by looking at the gauge record, and knowing the depth of water at the Iowa shore abutment and the several piers, that work was carried on at piers number two and four and the upper rest of draw pier, in a depth of water slightly exceeding that at the coffer-dam of the Iowa shore abutment at any time during the rise in October, 1869.

Int. Have you any expectation or hope of reward or compensation of any kind, from these contractors, if they are successful in this suit?

Ans. I have none.

Re-examination-in-chief.

Int. Give me from the guage record the highest rise of the river in October, A. D. 1869?

Ans. Twelve two-tenths feet.

Int. Give me from the highest guage record the highest rise of the river between October 8th and December 13th?

Ans. 4.80 feet on October 11, A. D. 1870.

Second general interrogatory by the Commissioner: Do you know of any other matter relative to the claim in question? If you do, state it?

I do not.

WM. WESTON.

Subscribed and sworn to before me, this 3d day of February, A. D. 1871.

EDWARD D. SWEENEY,
U. S. Commissioner.

Adjourned the taking of the written depositions until the 8th day of February, 1871, at 9 o'clock, a. m.

EDWARD D. SWEENEY,
U. S. Commissioner.

Deposition of Mancel Talcott, taken at Rock Island, Illinois, February 2, 1871.

MANCEL TALCOTT, being duly sworn, deposes as follows:

Int. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimants?

Ans. My name is Mancel Talcott, stone dealer, 53 years, Chicago, Ill. I have no interest, direct or indirect, in said claim; not related to claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. Did you enter into a contract with General Rodman, officer in charge of the arsenal at Rock Island, to supply the stone for the Rock Island bridge; if so, state the date thereof and the nature of such contract?

Objected to, contract being in writing.

Ans. Singer & Talcott, of which firm I am a member, made such contract for stone about March, 1869, to supply stone for Rock Island bridge, the contract called for ten thousand yards, more or less; and the contract was to be completed before the first day of November, A. D. 1869. I think in May, but it might have been in June, when we began to deliver stone. I cannot answer as to the quantity per month we were to deliver, without referring to the contract. We did not, in 1869, deliver two thousand yards of stone per month under this contract from time of commencement of the delivery until the first of November, 1869, for the reason we were stopped by the Government from delivering stone. Some time early in July we were stopped the first time. I think we were stopped again in September of 1869. I am not positive as to dates. We did not complete our contract in 1869. We supplied stone in 1870. We were not stopped officially in 1870. I will explain.

Mr. Singer and myself visited the Island, I think early in September, 1870, at which time the officers in charge of bridge (Major Stickney), with the contractors, upon looking over the stone already deliyered, concluded there was sufficient to complete the work, and it was unanimously agreed that we should stop shipping stone from that time.

Int. At the interview just spoken of, was it understood that there was thought to be sufficient rough stone on hand for the completion of the bridge, but that dimension stone would be required for the coping and starlings?

Ans. Yes, sir; there was same talk of that kind, but the small quantity that was supposed to be lacking (if any) to complete the work, Singer & Talcott agreed to get during the season of canal navigation, provided we were notified in time. My reason for saying that it was not official is, that I had no written orders to discontinue the delivery of stone. The water was shut out of the canal on Oc-

tober the 8th, 1870. We bring stone on the canal from our quarries at Joliet, where we ship by railroad. Our quarries are at Lamont, Illinois. I do know of the Government agreeing to pay extra freight on cars containing stone. From Lamont to Joliet the number of cars was twenty-four, and the extra freight $11 per car. I do not consider that our contract is completed. If they want any more stone we expect to furnish it; if not, we are through. From what I hear from Major Stickney, they will want a few more stones; can't tell how many. I mean by few, from one to five hundred yards.

Being cross-examined by Leak, for the United States, the witness says:

The reason we were stopped in 1860, the first time, in delivering stone, was on account of high water in the Mississippi and there being no facilities for getting stone away from the cars. This stoppage continued about sixty days. The ground was soft, so that a team could not get over it. They had but one derrick up, and that was piled full. They were taking the stone by means of snatch-blocks and horses, sliding them out on the ground. I think this was the last of June. It was no way to handle stone, but the only way they could move them under the circumstances, without having more derricks. The right way to have moved them would have been to have had derricks, or other machinery as good.

I was here at time I speak of, but I cannot place date. I saw one of the contractors, I think Mr. Livesey. The idea he conveyed to me was, that they were doing the best they could under the circumstances. They complained they could do nothing on account of high water. They made no complaints of the stoppage being an injury to them; but from my own observation, I think it was a benefit to them.

Int. Are you familiar in your business with the best methods of handling stone; if yea, how long have you been so familiar?

Ans. I have been in the stone business for seventeen years and handled stone before that on canal, and have been familiar with the best methods of handling stone for that time.

Int. From your experience in that line of business, was the method adopted by the contractors for removing the stone from the track and handling the same in the yard, such as would be approved by those familiar with that business? Was their method of doing it such as would facilitate or delay the work?

Ans. I should think not; it would not facilitate and must have delayed it under the circumstances. My impression about second stoppage is, that they had more stone than they could take care of; their traveler was full, and if we gave them any more stone they would have to haul them away from the traveler and back again; they were at the time laying no stone in the river. I think not. In my own judgment, the contractors were not delayed by either of the stoppages in delivering stone in 1869. There was but one stoppage in 1870, and that was by mutual consent, referred to by me above.

I do not think either of the stoppages in 1869 or 1871 were caused by the Government officers in failure of duty to provide stone as needed, but, I think, in each instance it was caused by our delivering stone beyond what was needed or the contractors' want of facility to handle it. I understood that the first stoppage was at the instance of the contractors; I do not think that any of these stoppages were desired by the Government officers, unless it may be at the time of the change from General Rodman to General Warren. I didn't come down at that time, and know nothing about that.

I have been here four or five times each season during the delivery of stone and saw contractors I think each time. I did not at any of these times hear from them, or any of them, that they were hindered or delayed in their work by reason of a failure to deliver stone under our contract. Whenever here, I endeavored to consult with Major Stickney and the contractors, so as to enable us to quarry such dimension stone in time so as not to delay the work, such dimension stone being the coping and the starling for the work. At one time contractors said they were short of starlings and wished us to quarry and send forward more starlings soon as possible, so that if they got into the river to work they would not be delayed, which we did on my returning home.

Int. Did you at once send all that they asked you to send of that dimension stone?

Ans. We sent them as soon as possible. I never heard until after Government took charge of work that they were delayed by not having dimension stones fast enough, except once that their cutters were short of work, and that they would like to have more starling stones, as there was more work on these stones. I never heard that they were delayed, or hindered, or damaged, by not getting these stones. They never made such complaints to me. The coping stone were all quarried to a given size one way, having to reach across top of the pier. The orders come to us for those stones, so many piers, so long, so wide, and to be got out with a certain thickness as near as may be.

The coping for turn-table pier was all delivered before they were ready to set it. I believe, from the manner in which the coping was quarried, great saving was made to the contractors in the cutting. We expect the Government to allow us an extra price for the coping from the manner in which it was quarried. At the time they required me to send forward more starling that their cutters might be employed, there was no delay to their work in the river. As I understood, or at that time as far as I knew, I don't see that it could make any difference to the contractors whether the stone from our quarry at Lamont was shipped by canal or railroad. I suppose that last stone would have been shipped just the same if the Government had not taken work from contractors, as I do not think the Government would have stopped the work for a few hundred dollars' worth of stone at that point.

Int. Have you any promise, expectation, or hope of reward or

compensation of any kind, of these plaintiffs, in case they are successful in this suit?

Ans. I have not.

Re-examination in chief, by F. H. Harvey.

Witness says: I did not have any official information from General Rodman to stop furnishing stone while he was in charge.

Int. You have said that, from the manner in which the coping was quarried, that a great saving was made to the contractors in the cutting of the coping of the turn-table pier. Was it your business to quarry this coping, or the business of the contractors?

Ans. It was our business to quarry stone for coping, but not to quarry to given sizes. We did this to accommodate contractors, hoping to get an increased price for the coping.

Int. Was it not to your advantage to quarry this coping-stone in the way you have stated; that is, was it not a saving to you of stone and cost of freight?

Ans. It was a saving to us from the manner in which the work was done, as the stone was brought to sizes by hammers instead of drills on the work, to a large extent.

Int. How many hours were you on the work during the different times you have been here?

Ans. Cannot state number of hours, but on each visit to the island spent what time was necessary to get posted from contractors as to what was wanted; also, spent time with Major Stickney as to the wants of the work.

Int. Were you, altogether, twenty hours on the work?

Ans. Perhaps not directly on the work.

Int. Was there any occasion when your visit to the work did not exceed one hour?

Ans. I think on one occasion; then I found no one there but some common laborers.

Int. Had the contractors any authority to order you as to the supply of stone or the stopping the supply of stone?

Ans. No. My object in consulting with them was that the work might go on harmoniously.

Cross-examination resumed.

Int. Was it necessary to go upon the works to ascertain the wants of the contractors for stone?

Ans. No. I could always find them there easier than anywhere else.

Second general interrogatory by the commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

MANCEL TALCOTT.

Sworn to and subscribed before me this second day of February, A. D. 1871.

EDWARD D. SWEENEY,
U. S. Commissioner for Northern District of Illinois.

Deposition of J. N. Macomb for claimant, taken at Rock Island, Illinois, February 3, 1871.

J. N. MACOMB being duly sworn deposes as follows:

First general interrogatory by the Commissioner:

Please to state your name, your occupation, your age, your place of residence the past year, whether you have any interest—direct or indirect—in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimants, or either of them.

Ans. My name is John N. Macomb, Colonel of Engineers United States Army; in Cincinnati up to June, at Rock Island since; 59 years of age; no interest direct or indirect in claim; no relation to either of them.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

I am general superintendant of the work of building of Rock Island bridge, and have been since the first of June, A. D. 1870. I, personally, made no complaints to the contractors, or either of them, in regard to the building of the bridge, between the 1st of June and 6th of October, A. D. 1870. I remember I had an interview with Mr. Harvey, one of the contractors, about the 4th of October, A. D. 1870. My impression is, that Mr. Harvey came to my office to have a settlement for the previous month, as I am the disbursing officer of the work. I think I did, on October the 6th, state that I had received a letter from the War Department stating that there had been complaints made of the tardy work on the masonry of the Rock Island bridge. I don't remember whether I asked Mr. Harvey how much they could do that season towards completing the work.

Int. Did Mr. Harvey state to you that he thought they, the contractors, could finish the upper rest of the draw pier and two other piers for which they had got the dams built, if they had sufficient and suitable material supplied by November 8th?

Ans. I havn't the slightest recollection of it.

Int. Did Mr. Harvey, at that interview, state that from a letter he had received from the quarry men that morning, stating that they, the quarry men, would endeavor to get there the requisite material to accommodate them, the contractors, and that should the Government furnish all the material necessary, and there should be a fine fall season, they, the contractors, would get the whole of the masonry of the bridge done that year?

Ans. I really don't remember anything of the details of that con

versation at that time. I don't remember that they said anything of the kind.

Int. Do you remember that Mr. Harvey said that the water would be shut out of the canal, by which the stone was conveyed from the quarry, on the 8th of October?

Ans. He may have said so, but I don't remember.

Int. Did Major Stickney come into the office during this interview?

Ans. I believe he did.

Int. Did you ask Major Stickney if there were sufficient material on hand to finish the work?

Ans. That would be a natural question, but I don't remember whether I asked it, and don't remember reply.

Int. Did you then ask Major Stickney that if the water was to be shut out on the 8th of October, how he was going to get the material to furnish the work that would be requisite?

Ans. I don't remember asking that question.

Int. Did the Major reply that he could get them by railway on the railway cars?

Ans. I don't remember that Major Stickney said that.

Int. Please look at the letter now shown you, and attached to this your deposition, marked "Exhibit A," and tell me whether that is a letter addressed by you, bearing date October 6th, A. D. 1870, to Messrs. Harvey & Livesey, the contractors.

Ans. That is my letter, and addressed by me to them on that date.

Int. Please look at the letter now shown you, bearing date the 6th of October, A. D. 1870, and attached to this your deposition, marked "Exhibit B," and tell me whether that is a letter addressed by you on that date to Messrs. Harvey & Livesey, the contractors?

Ans. That letter is the one I addressed to Messrs. Harvey & Livesey, the contractors, on that date.

Int. Did you receive, on October the 7th, A. D. 1870, a letter or protest from Messrs. Harvey & Livesey in reply to your first letter to them in reply to your letter of October the 6th; if yea, please produce said letter of protest?

Ans. I did receive such letter.

Int. Look at the copy now shown you and attached to this your deposition, and marked "Exhibit C," and say whether it is a copy of the letter referred to in your last answer.

Ans. It is a copy.

Int. Look at the letter now shown you and attached to this your deposition, and marked "Exhibit D," and say whether it is a letter addressed by you to said contractors on the 7th of October, A. D. 1870.

Ans. That is my letter addressed to them on that date.

Int. Look at the paper now shown you and attached to this your deposition, and marked "Exhibit E," and say whether it is a copy of a letter addressed by them and received by you, dated October 8th, A. D. 1870.

Ans. It is a true copy of such letter.

In your first letter, dated October 6th, A. D. 1870, and marked "Exhibit A," you say that "I will take the work as it stands, and carry it on under the provisions of the contract, which contemplates such a change." Look at the contract now before you, and point out the provisions to which you refer.

(Objected to as incompetent.)

Ans. The provision is on the second page of the contract, and begins at the beginning of line eight from the top, and is in the words as follows:

"It is further stipulated and agreed, that if any default shall be made by the parties of the first part in the performance of the work specified in this contract, of the quality, and at the times and place therein provided, that then, in that case, the United States shall have the right to take entire and exclusive charge of the work, and to complete it in accordance with the conditions prescribed in this contract, charging us with the entire cost of completing it, and crediting us with the amount per cubic yard heretofore stipulated to be paid us for the completion of the work." That is the provision.

Int. Had the contractors committed any default up to the 6th day of October, A. D. 1870?

Ans. They had.

Int. Specify the default to which you refer.

Ans. In not forwarding the work with due expedition.

Int. Previous to that date, (October the 6th, A. D. 1870,) did you ever make any official complaint to the contractors that they were not forwarding the work with due expedition?

Ans. I did not make any to them personally, either verbally or in writing.

Int. Did you obtain any proof of the default of the contractors in forwarding the work with expedition before you addressed them the letter of October 6, A. D. 1870?

Ans. The information on which I acted was an official letter from the chief of engineers, Washington, D. C., behind which I did not feel called upon to go.

Int. Please produce a copy of such letter.

Ans. I hereby produce copy, and attach same to my deposition marked "Exhibit F."

Int. Do I understand that, from the authority of this letter received by you from the chief of engineers, you took possession from the contractors the work of building the Rock Island bridge?

Ans. The answer is this: I took possession under the provision of the contract. My attention was called to it by this letter from the chief of engineers.

Int. Do you know who made the complaints referred to in this letter?

(Objected to as immaterial.)

Ans. I do not know who made complaint. It was enough for me

to know that they seemed to be satisfactory to my superiors at Washington.

Int. Looking at the contract now before you, which is the duplicate in possession of the contractors, wherein it is stipulated that "in case of overwhelming and unforeseen accident by fire or otherwise, the circumstances shall be taken into equitable consideration by the United States before claiming forfeiture for non-delivery at the time specified," state, if you please, whether any circumstances, and, if any, what circumstances were taken into equitable consideration by you before claiming forfeiture of this contract?

Ans. I did not consider that stipulation at all; it is not in my quadruplicate of the contract.

Int. Is the stipulation referred to by you printed in the duplicate of the contractors now before you?

(Objected to, calling for oral evidence of a written contract.)

Ans. It is printed in the duplicate in possession of contractors.

Int. Did you receive on the 22d of October, A. D. 1870, from the contractors, Harvey and Livesey, a printed letter or protest, bearing date the 8th of October, A. D. 1870; if yea, look at the copy here shown you and attached to this your deposition marked Exhibit G, and say whether it is a copy of such printed protest?

Ans. I did receive such letter or protest, and Exhibit G is a true copy of same.

Int. Please look at the paper now shown you, and say whether it is a copy of a letter received from the contractors, dated September 20, A. D. 1870, by you; and if yea, please attach the same to this your deposition?

Ans. It is a copy of such letter, and I attach same to this my deposition, as Exhibit H.

Int. Did you have any interview with the contractors about the letter marked Exhibit H?

Ans. I think both of them called upon me about that letter.

Int. Please state, as near as you can recollect, the conversation?

Ans. My only recollection is, they came to ask a settlement on the basis of that letter, and not having any information by which I could decide or recommend the matter, I never did anything about it except to ask my assistant what could be done in the case. His answer to me was, that it would take some time to get the requisite information to a proper understanding of the matter.

Int. Did you, at that time, state to the contractors that you would report favorably on that letter?

Ans. I felt so disposed, and said that I would make a report when I got the information. The press of business has prevented me from making that report from that time to this.

Int. Did you, at a subsequent period, have an interview with Mr. Livesey? Withdrawn.

Being cross-examined by J. B. Leak, attorney for the Government, witness says:

Int. Do you intend to give the impression by your answers to the

questions-in-chief, that the first you knew or noticed of any delay in the prosecution of the work, was in the communication received from the chief of engineers in the letter heretofore attached?

Ans. No.

Int. State whether or not that prior to that time you had communicated or directed your assistants to communicate with the contractors in reference to delays in the prosecution of the work?

Ans. I had called upon Major Stickney to do this several times; to communicate to the contractors the necessity of prosecuting the work with more energy.

Int. Then, what you mean is, that the letter received from the chief of engineers was the cause of your immediate determination to take the work?

Ans. That is the case; that letter seemed to leave me nothing else to do.

Int. Did you know of any other way which you could expidite the work at that time, except by taking possession of the work yourself; or was it your opinion at that time that the contractors themselves could not be induced by any means under your control to prosecute it more vigorously than they had already done?

Ans. I knew of no other way, and it was my opinion at that time that they could not be induced to prosecute the work more vigorously, or else it seems to me they would have done it.

Int. Have you, in your business or profession, been familiar with the building of masonry in water in situations similar to this work, and the difficulties of doing such work, and, if so, for what length of time?

Ans. The only practical experience I have had in the building of masonry has been in the building of forts Constitution and McClary, in New Hampshire, which work I conducted for the space of three years. My business as an engineer has given me an interest in works of that kind, and caused me to give my attention to all information I could get. I have been in the engineer department for thirty years, and all this time familiar with works of this kind, in water and on land.

Int. State whether, in your opinion, from your knowledge, that your experience has given you, taking into consideration the stages of water in the river, and anything else that may have hindered or delayed these contractors beyond their control, they had, prior to the Government taking possession, prosecuted this work with such energy, or nearly such energy, as they might have done?

Ans. It is my opinion, considering all these circumstances, they still had not prosecuted the work with the energy that they might have done.

Int. Previous to the Government taking possession of the work, October 8, A. D. 1870, had these contractors, in an official communication or otherwise, brought to your knowledge that they were being hindered in the prosecution of their work by reason of the

failure of the Government to deliver to them stone of any kind or dimensions?

Ans. They had made some representations to me—complaints of short supply of stone, but an inspection of our premises on the Island where the stone is received and distributed over the ground, seemed not to justy such complaints.

Int. Did they make any complaints of this kind previous to you writing them the first letter notifying them of your intention to take the work?

Ans. I don't remember when those complaints were made.

Int. Did you make an examination yourself of the condition of the yard as to the justness of the complaint?

Ans. I have been through there several times, and was struck with the large quantity of stone that had been delivered.

Int. You have been asked if you obtained any proof of the default of the contractors in forwarding the work with expedition before you addressed them the letter of October 6, A. D. 1870. Had you or had you not already all the proof in your own possession, as officer in charge of the work, necessary to exercise your own judgment?

Ans. I had, from the reports of my assistant, sufficient information to satisfy me that the work was not progressing as it should have done.

Int. State why you declined to use or purchase the machinery, tools, &c., of Harvey & Livesey, which were on the work at the time Government took possession, and why you substituted other machinery?

Ans. I would gladly have used their machinery, and boped to have got possession of it; and expected to give them credit therefor in final settlement, but I was not willing to purchase it in money that I should have been called on to charge to them by the terms of the contract; as I understood I could not get it without money I didn't take it at all. I substituted other machinery, for we were pressed for time and I took the first we could get. I got the most of it from arsenal on Rock Island, by favor of General Rodman.

Int. How much of that machinery did you purchase?

Ans. We purchased a steam engine, and I called in from other works the steamer Winnecanne. I also had some machinery from Mr. Haroon, who had been a contractor on Rock Island Rapids. This we hired. I don't remember, without referring to the accounts, we purchased anything else except what I have stated.

Int. Was this change of machinery done as economically for the contractors as it could be done consistently with the interests of the Government, to prosecute the work?

Ans. It was.

Int. Have you any expectation or hope of reward or compensation of any kind from the claimants in this suit if they are successful?

Ans. I have none.

Re-examination in chief:

I came here in last days of May or first days of June, 1870, and walked over the works and looked at them with interest. I was here again in early part of July prior to 6th; again about the 17th of August, and then again on the 10th of September; as far as that goes, those were the times when I was here. After 10th of September, Rock Island has been my actual residence. Each time I walked over the works.

Int. How many inspections have you made of the works between the 10th of September and the 6th of October?

Ans. Between those dates I am unable to give you the number of times I was there; I was there sometimes.

Int. You have stated that you had reports from your assistant of the delay of the contractors in the progress of this work; be good enough to give me the dates of these reports?

Ans. I have not the dates. My assistant and I were in daily and constant communication, and it was my business to ascertain from him how the work progressed.

Int. You have said your first visit to this place to inspect the work was at the end of May or beginning of June. Did your assistant complain to you then of the manner in which the work was progressing under the contractors?

Ans. I hadn't any assistant then in connection with these works; that was before I relieved General Warren.

Int. Did you, from your own inspection at that time, consider that there was any delay on the part of the contractors in the progress of the work?

Ans. I wasn't inspecting the works in reference to that, then. I was looking over the works out of curiosity.

Int. Your next inspection was in the early part of July. Did your assistant then make any complaints to you of the contractors?

Ans. I don't remember.

Int. Your next visit was about 17th of August, A. D. 1870. Did your assistant then make any complaints to you of delay on part of the contractors?

Ans. I don't remember.

Int. Your next visit was on the 10th of September; when you came here to reside; did your assistant then make any complaints against the contractors?

Ans. The complaints from that time out were so frequent as to give anxiety about the work.

Int. These complaints having been so frequent, as stated by you, to give you anxiety. Did you not consider it your duty to address any communication to the cantractors on the subject of such complaints?

Ans. I did not consider that necessary. I was satisfied to leave that with the assistant, who had been in immediate charge of the work, as superintendent.

Int. Was any or either of those complaints made in writing, or is there any record of those complaints?

Ans. They were not in writing to me, and I have no record of them.

Int. During the period in which those complaints were made, namely, from the 10th of September to the 6th of October, did you notice or did you ascertain the stage of water in the river where works were carried on?

Ans. I did notice the stage of water, but the record was kept by my assistant, to whom was given the stage from up the river also.

Int. Look at that record now produced before you and give me the morning reading of the stage of the water and the amount of rise in the river, about low water mark, between the 10th of September, A. D. 1870, and the 6th of October, 1870?

Ans. The height of water above low water mark is the record, and is:

September 10, 8.5 feet; September 11, 8.38 feet; September 12, 8.56; September 13, 8.65 feet; September 14, 8.60 feet; September 15, 8.40 feet; September 16, 8.20 feet; September 17, 7.90 feet; September 18, 7.65 feet; September 19, 7.30 feet; September 20, 7 feet; September 21, 6.75 feet; September 22, 6.50 feet; September 23, 6.30 feet; September 24, 6.15 feet; September 25, 5.85 feet; September 26, 5.66 feet; September 27, 5.33 feet; September 28, 5.10 feet; September 29, 4.97 feet; September 30, 4.85 feet; October 1, 4.67 feet; October 2, 4.55 feet; October 3, 4.50 feet; October 4, 4.85 feet; October 5, 4.68 feet; October 6, 4.67 feet.

Int. When these complaints were being made to you between the 10th September and the 6th of October, did you ascertain the stage of water in the river?

Ans. I knew the stage, this very record was on my desk.

Int. Do I understand then, that, knowing the stage of water in the river, the reason why you did not address any communication to the contractors was because of the high stage of water? You knew, with your extensive experience in carrying on works of this nature, that it was impossible and impracticable to proceed with safety or advantage?

Ans. That was not the reason; nor did I consider the stage of the water as being too high for a proper progress of the work.

Int. Do you know the ordinary current of the river at this point at low water?

Ans. I don't know. I have heard it said by common report that it is five miles per hour, but I do not believe it.

(Answer objected to as giving hearsay.)

Int. Do you know or have you heard the rate of current of the river at a rise of or exceeding four feet above low water?

Ans. I have no exact information about that. The record is in my office, and that upon a production of the record I ascertain the current of the river a 3.4 above low water to be 2.44 miles per hour; at between seven and eight feet, to be 2.98 miles per hour.

Int. Do you consider it practicable to carry on works of this nature at a stage of water ranging from four to eight feet above low water mark, with safety or advantage of parties having the conduct of such works?

Ans. I consider it quite a practicable thing; we should be prepared for the exigency of the stage of water mentioned in carrying on such works.

Int. Please look at the record of the stage of water in the river, and give me the medium of the rise of the river above low-water mark between 8th October, 1870, and 15th of December, 1870, that being the period you carried on these works.

Ans. The mean was about 3 five-tenths.

Int. If, as you have stated, you consider it practicable to carry on works in the river at this point, at a stage ranging from four to eight feet above low-water mark, with safety or advantage, explain to me why it was that, with the water at a mean of 3 five-tenths feet during the time you had the works under your charge, your attempts to build the coffer-dam of pier number five were repeated failures, and is a total failure at the present time.

Ans. We had so many coffer-dams to build, repair, pump out, that it is not to be considered surprising that we should have failed on one out of five. The work at coffer-dam number five was discontinued when I discovered its insufficiency and further efforts at that point were postponed by cold weather.

Int. Did the contractors build two of those dams complete?

Ans. They did, two of the dams complete; they also built a part of the dam of the upper rest, but we had to do this last over again.

Int. Did the contractors build a portion of the dam of the upper rest with double plank, and did you not build ramainder with single plank?

Ans. I can't answer that question.

Int. You say you purchased a steam-engine; did you also purchase pumps of the same kind as those used by Harvey & Livesey, and did you also buy wheel-barrows, crow-bars, blacksmith-shop and tools and shovels?

Ans. We purchased the engine. I can't say as to the other items.

Int. You have said the reason why you did not purchase the machinery tools, &c., from the contractors was, because you could not get them without money, and as you could not get them without money you did not take them at all. Did you get the steam-engine and pumps, &c., without money?

Ans. I did not, but I did not pay money to the contractors for them.

Int. Having said that you would have gladly used their machinery, tell me, if you can, any feasible reason why you should not pay them, the contractors, for machinery as well as to pay money to any one else for machinery of a similar kind?

Ans. I considered there would have been an inconsistency in me paying them money which I should have to charge to them, and I

also felt in the new position I had assumed towards them, closed money transactions between us, touching the future progress of the work until its completion.

Recross-examination.

Int. Can you state whether there was any unexpected difficulty in relation to the depth below water of the rock bottom at coffer-dam number five; if so, what that difficuly was and whether it occasioned the failure of the completion of that dam in time?

Ans. There was an unexpected difficulty developed at that point, after the pumping of the dam and the removing considerable of the gravel from the bottom among which we found numerous boulders and some blocks of limestone; we found that those boulders and blocks of limestone must have been mistaken for the ledge in making the probings for the bottom; on trying the probing-rods anew, we found the ledge to be some six or seven feet deeper down than had been supposed from previous indications and examinations. That unexpected difficulty made it necessary to abandon that dam at that time, and in view of the lateness of the season, it would have been bad economy to attempt making a new dam then.

Second general interrogatory by the commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

I know of nothing further.

J. N. MACOMB,
Col. Eng. U. S. Army.

Subscribed and sworn to before me this 3d day of February, A. D. 1871.

EDWARD D. SWEENEY,
U. S. Commissioner.

EXHIBIT A.

SUPERINTENDENT OF CONSTRUCTION ROCK ISLAND BRIDGE,
Rock Island, Ill., October 6, 1870.

To Messrs. HARVEY & LIVESEY,
Contractors for Masonry on Rock Island Bridge,
Rock Island, Ill.

SIRS: I am required by the Chief of Engineers, U. S. A., under date of 23d September, 1870, in consequence of complaints that have reached him of the tardy progress of the work upon the masonry of the bridge in your contract, to take suitable and efficient measures to expedite the work. In view of this requirement, I have to inform you that I will take the work as it stands, and carry it on un-

der the provision of the contract, which contemplates such a change.

I remain, very respectfully, your most obedient servant,

J. N. MACOMB, *Col. Eng's U. S. A.*,
In charge of Rock Island Bridge.

EXHIBIT B.

ROCK ISLAND, ILL., *October 6, 1870.*

To. Messrs. HARVEY & LIVESEY,
Contractors for the Rock Island Bridge,
Rock Island, Illinois.

SIRS: In view of the exigency of my taking up and carying on the work of your contract, as explained in my letter to you of this date, I have to ask you whether you will leave with the work the boats, tools, machinery, &c., necessary for carrying it on, or compel the United States to purchase the necessary outfit for completing the work, which outfit would, of course, be charged to you in the final settlement.

Please give me your answer at the earliest possible moment.

I remain, very respectfully, your most obedient servant,

J. N. MACOMB, *Col. Eng'rs, U. S. A.*,
In charge Rock Island Bridge.

(EXHIBIT C.)

J. N. MACOMB, *Col. of Engr's, U. S. A.*,
in charge of Rock Island bridge.

DEAR SIR: In answer to your communication of October 6th, 1870, we have to reply, that we are advised by counsel, that by surrendering the work of constructing the masonry of Rock Island bridge, under said request, a question might arise on account of the peculiar wording of said writing wherein you say: "In view of the requirements, I have to inform you that I will *take the work as it stands, and carry it on, under the provision of the contract, which contemplates such change*," as to whether or not we do not voluntarily surrender the same. And we, therefore, have to decline the surrender. If the Government take possession it must be, as it is, against our assent and with our protest. For, aside from completing said work within the time specified in said contract, to wit, December 1, 1869, which was prevented by the United States Government, in that it refused to let us commence said work until near that date, we have complied with all the terms and requirements of said contract, and we do not now understand that the Government undertakes to assume the completion of said work by reason of our failing to place the masonry where directed, or because that the work is not done in the

manner provided in said contract, which are the only causes remaining that would authorize the Government to assume the completion thereof, but only because of *some complaints of tardy progress of the work.* We therefore deny the right of the Government to assume said work, and shall relinquish it only when notified by the Government that it has taken possession thereof.

HARVEY & LIVESEY.

October 7, 1870.

Received the original, whereof this is a copy, this 7th day of October, A. D. 1870.

(EXHIBIT D.)

ROCK ISLAND, ILL., *October 7, 1870.*

Messrs. HARVEY & LIVESEY:

GENTLEMEN: Your communication of this date, in which you refuse to surrender the work of constructing the masonry of the Rock Island bridge, after having received notification from me that I would take the work, has been received. In reply thereto I have to say, that I will take possession of the above work for the Government to-morrow morning at 7 o'clock.

I remain, very respectfully,

Your most obedient servant,

J. N. MACOMB, *Col. Eng'rs U. S. A.,*

In charge of Rock Island bridge.

(EXHIBIT E.)

ROCK ISLAND, *October 8, 1870.*

Col. J. N. MACOMB, *Col. Eng. Corps, U. S. A.,*

In charge of construction of the bridge at Rock Island, Ill.

DEAR SIR: That there may be no misunderstanding as regards our position in relation to our machinery, boats, &c., used by us in constructing the masonry in the piers and abutments of the Rock Island bridge, we would say, that we are ready and willing to sell them to the U. S. Government at a fair valuation; that to be ascertained by competent judges of such property.

Very truly, your obedient servants,

HARVEY & LIVESEY.

(EXHIBIT F.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., September 23. 1870

Col. J. N. MACOMB,
Corps of Engineers, Rock Island City, Ill.

SIR: The Chief of Engineers directs me to inform you that complaints have been made of the tardy progress of the contractors for building the piers of the Rock Island bridge. You are respectfully requested to take suitable and efficient measures to expedite the work.

Very respectfully, your obedient servant,
(Signed,) JNO. G. PARKE,
Major of Engineers.

By command of
Bvt. MAJ. GEN. HUMPHEYS.

(EXHIBIT H.)

ROCK ISLAND, ILL., *September 20, 1870.*

Col. MACOMB,
In charge of the construction of the Railroad and Wagon Bridge at Rock Island, Ill.

DEAR SIR: On the 1st day of June, 1869, we entered into a contract with the United States, through Gen. F. J. Rodman, to do the mason work in erecting the piers and abutments for the railway and wagon bridge across the Mississippi River from Rock Island, Ill., to Davenport, Iowa.

At the time the proposals for bids were invited, and at the time the contract for the said work was let, as well as at the time the contract was executed by us, it was understood by us, and we think it was so understood by General Rodman, through whom the contract was made on the part of the United States, that the amount of masonry to be done was about 10,000 cubic yards.

Since the execution of the contract with us, the plans for the abutments and piers, under General G. K. Warren, have been so changed and modified that the amount of masonry to be done under our contract has been so reduced that the total amount of work by us will not exceed 6,500 cubic yards, which is a reduction of some 3,500 cubic yards of masonry from the original plan under which we made the contract.

Had this reduction in the amount of masonry been such as would have been an average of the entire work, it would not be a matter of so serious a nature to us as it now is, but as this reduction is largely in the draw pier, which, in the original outline plans shown us at the time the proposition to do the work was made, as well as at the time the contract was entered into, was to be of solid mason-

ry, under the modified plan, this pier is to be constructed hollow, and in other piers, where in the original plan they were to be in width at their base 14 feet, they are now reduced to 10 feet base.

These reductions reduce the rough, or least expensive, class of work some 3,400 cubic yards, while the face work, the most expensive part of the work, is reduced but about 66 cubic yards. The reduction in one class of work bears no just proportion to the reduction in the other.

The difference to us is very great, as it increases the cost per cubic yard of doing the work, from 40 to 50 per cent. by the unequal proportions of reduction in each class of work; this I think you will readily see and can but admit is true.

In view of these facts we would respectfully ask that you, in making up our next monthly estimates, you allow us for these differences, and that the same be added to our monthly estimate of work done in proportion the work already done bears to the whole work. As we claim this is right and just, as the right and fact to change the class of work, either in kind or quantity, implies a right to compensation thereof.

We are sir, your most obedient servants,

(Signed,) HARVEY & LIVESEY.

I certify that the above is a true copy, and is appended to my deposition as "Exhibit H."

J. N. MACOMB,
Col. Engrs. U. S. A.

Deposition of John Crubaugh for Claimant, taken at Rock Island, February 8, 1871.

And now, on the 8th day of February, 1871, at 9 o'clock a. m., resumed the taking of the depositions.

John Crubaugh, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner:

Please to state your name, your occupation, your age, your place of residence the past year, whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant?

Ans. John Crubaugh, contractor, forty-three years, Rock Island, Illinois. I have no interest, direct or indirect, in claim. Not related to claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. In the copy of the advertisement dated May 12th, 1869, now before you, and attached to the duplicate of the contract bearing date the 1st of June, 1869, entered into by Harvey & Livesey with the United States, to construct the piers and abutments for the new rail and wagon bridge to be built to connect the island of Rock

Island with the city of Davenport, are these words: "Parties making bids will state the price per cubic yard of solid masonry, at which they are willing to complete the work the United States furnishing the stone, cement, and sand as above stipulated, and nothing more. They will also make a bid, stating separately the price per cubic yard of solid masonry at which they will undertake to build the piers and abutments, the United States furnishing the stone, cement, and sand as above, and the price at which they will agree to put in the necessary coffer-dams with their protections."

Read the copy of the proposal now before you, which is the proposal made by Harvey & Livesey, in reply to such advertisement, and which is in the following words:

"Rock Island, May 25th, 1869. We propose to build the masonry of piers and abutments of the Rock Island bridge as per annexed advertisement.

"Small piers and abutments, per yard, $11. Draw pier, $13.

"HARVEY & LIVESEY,
Madison, Wis."

and tell me whether the construction which, as a practical stone mason and builder, you would put upon such proposal of Harvey & Livesey is, that such proposal includes any bid at which they will agree to put in the necessary coffer dams and the protections?

(Objected to as incompetent and immaterial.)

Ans. I think not.

Int. Do the words in the contract "do hereby contract and engage with the United States to construct the piers and abutments," in your judgment include the building and constructing of the coffer dams and their protections?

Ans. No, sir; not as I understand it.

(Objected to as incompetent and immaterial.)

Int. In the contract are these words: "payments in such funds as the Treasury Department may provide, at the rate of $13 per cubic yard for all masonry in draw pier, and at the rate of $11 per cubic yard for all other masonry." In your judgment, do these words include or can they be possibly construed to include any payment or payments for the building of the necessary coffer dams and their protections?

(Objected to as incompetent and immaterial.)

Ans. No, sir; I should think not.

Int. Please describe to me the material of which the masonry of "piers and abutments" must necessarily have been made, and also the material of which coffer dams and their protections are made?

Ans. The masonry of piers and abutments is made of stone, cement, and sand; coffer dams are made of timber, iron, earth, clay or gravel; the protections are made of timber and stone, sometimes iron in them.

Int. Tell me, from your experience as a contractor of this kind of

work, whether the work of solid masonry and the work of building coffer dams and their protections are not entirely two different classes of work?

(Objected to as incompetent and immaterial.)

Ans. They are.

Int. Would the prices named in the proposal, $11 and $13, have been reasonable or adequate for the "solid masonry" if the contractors had had the coffer dams and their protections to put in first at their own expense?

(Objected to as incompetent and immaterial.)

Ans. In my judgment, I think not.

Int. Would a contractor who agreed to build an "abutment of masonry" in the Mississippi river be expected, or could be expected, to erect the coffer dam and its protections without being paid therefor separately?

(Objected to as incompetent and immaterial.)

Ans. No.

Int. How much capital, in your judgment, would be necessary to carry on such a contract as the one now in question?

(Objected to as incompetent and immaterial.)

Ans. If you pay promptly monthly for work done, I should think $40,000 sufficient.

Int. In the construction of piers and abutments where the length of them is nearly the same, but the width reduced, that is, when there is a reduction in the work, such reduction being caused by reducing the width of the piers at the base of from fourteen feet to ten feet, and a reduction in the draw pier from fifty-six feet to thirty-eight feet, and a portion of that draw pier being hollow instead of being solid, and where the contractors are not to furnish any material, would there be any difference, and, if so, what difference to the contractors who did the work?

(Objected to as incompetent, calling for a mere opinion of witness.)

Ans. There would be a difference, in my judgment, about forty-one per cent.

Int. Then such a reduction of the work as spoken of would be a very considerable loss to the contractor?

(Objected to as incompetent, calling for a mere opinion of the witness.)

Ans. Yes, sir.

Int. The contract bears date the 1st day of June, 1869. The contractors were ready to commence work by the 14th of June, A. D. 1869, but were not furnished with any plan of any part of the work until the 4th of September, 1869, and then only with a plan of one small abutment. During which time the claimants, their workmen, tools, and machinery were, in a great measure, kept idle. Please tell me, in your judgment, if the claimants suffered any, and, if so, what amount of damage in consequence of such delay?

(Objected to as incompetent and immaterial and leading.)

Ans. No doubt it was a damage; it might be anywhere from $10,000 to $40,000 damage.

Int. Do you think such damage could reasonably be less than $10,000?

(Objected to as incompetent and immaterial.)

Ans. It possibly might.

Being cross-examined by J. B. Leak for the United States, the witness says:

Int. You have stated that you are a contractor; state whether or not, in your opinion, the claimants in this suit did, previous to the Government taking possession of this work, (October 8th, A. D. 1870,) carry on the same as expeditiously as they might or ought to have done?

Ans. I don't know, sir.

Int. Have you any expectation, promise, or hope of reward, compensation, or benefit of any kind, direct or indirect, from these claimants, in case they are successful in this suit?

Ans. Not that I am aware of.

Second general interrogatory by the commissioner:

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

JOHN CRUBAUGH.

Subscribed and sworn to before me this eighth day of February, A. D. 1871.

EDWARD D. SWEENEY,
U. S. Commissioner.

Deposition of Thomas J. Robinson for claimant, taken at Rock Island, Illinois, on the 16th day of July, 1871.

On the 16th of February, I suspended the taking of the deposition of Amos Stickney, and took the deposition of Thomas J. Robinson, below, and then again, on the same day, resumed the taking of the deposition of said Stickney.

Thomas J. Robinson being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimants, or either of them.

Answer. My name is Thomas Robinson. I am captain of the ferry-boat running between the cities of Rock Island, Illinois, and Davenport, Iowa. I am 52 years of rge; have lived in the city of Rock Island for the past year. I have no interest, direct or indirect, in

said claim, and not related to either of the claimants in any manner whatever.

Being interrogated by F. H. Harvey for claimants, the witness says:

Int. Have you, as captain of such ferry-boat, an intimate knowledge of the Mississippi River at this point?

Ans. I have.

Int. Since the month of June, 1869, and up to the month of October, A. D. 1870, has the river been tranquil at this point, or has it been subject to rises?

(Objected to as leading and immaterial.)

Ans. It has been subject to rises.

Int. At what periods, so far as you recollect, did they occur?

(Objected to as immaterial.)

Ans. The river was unusually high, for that season of the year, in the fall of 1869. During the spring and summer of 1870, it was above the usual height. It continued up all the season, to October, 1870, comparatively speaking.

Int. How long have you known the river at this point?

Ans. Since the year 1853 I have had charge of this ferry.

Int. As captain of the ferry-boat, have you had daily opportunities of seeing the progress the contractors were making in the construction of the masonry of this bridge?

(Objected to as incompetent.)

Ans. They were in view of the ferry, but at such distance that I could not note their progress.

Int. In your opinion, were they subject to unforeseen and unavoidable delays in their work in consequence of the repeated and continuous rises of the river?

(Objected to as incompetent.)

Ans. I should think they were.

Int. As far as you could see, did they, or did they not, use all the energy and diligence it was possible men could under such circumstances use, in the progress of the works of this bridge?

(Objected to as incompetent.)

Ans. So far as I could see, they did.

Being cross-examined by J. B. Leak for the Government, the witness says:

Int. In your answer to the last interrogatory, you have stated, "as far as I could see, they did." State now how far you could see.

Ans. I gave the matter no particular attention, and am unable to say.

Int. Are you at all familiar with building masonry in the river, such as this is, or do you know, practically, the difficulties to be encountered, and how they are to be overcome?

Ans. My knowledge of such structures is only from general observation. I have never had anything to do with them myself.

Int. You have said there were unusual rises in the river in the years 1869 and 1870. Do you mean that it is unusual to have rises

at those seasons of the year, or only that it is unusual to have rises of such height as there were at those seasons?

Ans. I meant to say that the rises were unusually high.

Int. What is the difference in the time of duration between such rises as they usually have and those you speak of?

Ans. It is difficult to define. My impression is, that the rises in the fall of 1869 and spring of 1870 were of longer duration than usual.

Int. State, if you can, how much longer than usual.

Ans. During the year 1870, there was more than an ordinary stage of water during the entire season.

Int. How much longer were the rises in the years you have spoken of, in their duration, than the usual rises during the same seasons of year?

Ans. I could not say.

Int. Don't you think that somehow or other the amount of masonry which was put into the river at the time the Government took possession, as you had the opportunity of seeing the same from your boat or otherwise, ought to have been put in a good deal sooner than it was?

Ans. I am not sufficiently acquainted with that class of work, and my knowledge of the efforts made on the part of Harvey & Livesey are not sufficient to enable me to determine that question.

Int. Have you any promise, expectation or hope of reward or compensation, or benefit of any kind, direct or indirect, from these claimants, if they are successful in this suit?

Ans. I have not.

Second general interrogatory by the commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

T. J. ROBINSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1871.

EDWARD D. SWEENEY,
U. S. Com.

Deposition of Joseph Waters for claimant, taken at Rock Island on the 13th day of February, 1871.

And now, on the 13th day of February, A. D. 1871, at the hour of nine o'clock, a. m., the time to which the hearing of the above witnesses was adjourned, it appearing to the commissioner that Joseph Waters, one of the witnesses to be examined in the above-entitled cause, is sick and confined to his room, on Moline avenue, in said city of Rock Island, the commissioner, on the motion of the attorney for

said claimants, adjourns the hearing of the taking of the deposition of said witness to his room as aforesaid.

And now, on the said 13th day of February, A. D. 1871, at the hour of 10 o'clock, a. m., at the room of the said Joseph Waters, said witness being present, and being sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants, or either of them.

Ans. Joseph Waters, clerk to Genl. Rodman, at Rock Island arsenal; 52 years of age; lives at Rock Island, Illinois; no interest, direct or indirect, in said claim; and not related to either of claimants.

Being interrogated by F. H. Harvey, attorney for claimants, witness deposes and says:

Int. Is the contract now produced to you, and dated 1st of June, 1869, the duplicate contract entered into by Harvey & Livesey with the United States, for the construction of the masonry of the Rock Island bridge?

Ans. It is.

Int. Is the signature of T. J. Rodman, at the foot of such contract, the handwriting of Gen. T. J. Rodman, lieut. col. of Ordnance, and the officer in charge, at the date of such contract, of the construction of said bridge?

Ans. It is.

Int. Did you see him sign it?

Ans. Yes.

Int. Is the signature "Joseph Waters," as one of the attesting witnesses to the contract, your handwriting, and do you request this duplicate contract annexed to this your deposition.

Ans. Yes; I do, and mark the same as "Exhibit A" to my deposition.

Being cross-examined by J. B. Leak for the United States, the witness:

Int. Is the written portion of this contract in your handwriting?

Ans. Yes.

Int. I see here the words "United States to furnish stone, cement, sand, and all necessary templets required for the work and nothing more." By whose direction were the words, "and nothing more," inserted there?

Ans. By direction of General Rodman.

Int. Was anything said about them by the other parties to the contract at the time of execution; if so, what was said? State, if you know, what was intended by the parties to be expressed by those words.

Ans. I wrote a rough copy of the contract and it was given to Harvey & Livesey for their examination and approval; they returned

it as satisfactory, and I at once made out the five copies of the contract. I understood that the meaning of the words "and nothing more" was, that the Government was to furnish no other material or labor in the prosecution of the work than just what was mentioned in the contract.

Int. Have you any hope, promise, or expectation of reward, compensation, or benefit of any kind, from the claimants, if they are successful in this suit?

Ans. No, sir.

Second general interrogatory by the commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Ans I do not.

JOS. WATERS.

Subscribed and sworn to before me this 13th day of February, A. D. 1871.

EDWARD D. SWEENEY, *U. S. Com.*

[NOTE, BY THE CLERK.—The copy of the contract, marked Exhibit A to this deposition, being a duplicate to Exhibit C to the petition on page 17 of this record, and the copy of the bond being a duplicate of the one on page 29 of this record, are omitted, as per stipulation of counsel for both parties, filed June 8, 1878.

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Deposition of Amos Stickney, for claimant, taken at Rock Island on the 17th day of February, 1871.

AMOS STICKNEY, being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimants, or either of them.

Ans. My name is Amos Stickney. I am captain of engineers of U. S. Army. I am 27 years of age. Rock Island, Illiniois. I have no interest, direct or indirect, in said claim. I am not related to the claimants, or either of them.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. At what date did you first have any official connection with the works of the construction of the Rock Island bridge?

Ans. About 17th of July, A. D. 1869.

Int. What position were you appointed to then, and have you had the same to this date?

Ans. About that time, being assistant to General Warren's Corps of Engineers, I was directed to proceed to Davenport and confer with General Rodman, and relieve him as far as he wished to be relieved, from the charge of the construction of the bridge, and to get whatever information I could concerning the bridge. Since then I have been assisting General Warren, and subsequently Colonel Macomb, in the general work of planning the bridge, and have been especially in charge of the sub-structure, superintending the masonry thereof.

Int. Is the letter now produced to you, bearing the date 22d day of July, A. D. 1869, in your handwriting, and does it bear your signature?

Ans. It is my hand-writing, and has my signature thereto.

Int. Is it addressed to Messrs. Harvey & Livesey, and is it an order to them to stop all work under their contract?

Ans. It is.

Int. Do you request said letter to be attached to this, your deposition?

Ans. I do, and mark the same "Exhibit A."

Int. When did you next receive any communication on the subject of the works of this bridge?

Ans. On the 22d of July, 1869, I received a telegram from General Warren in reply to one from me, stating that he would leave St. Paul for Rock Island on Saturday.

Int. Did you receive any communication about that time from the Chief of Engineers on the subject of these works, and, if so, when?

Ans. I did not—General Warren did.

Int. Have you that letter or communication with you, if so, please produce it?

Ans. I have it and produce it; it is a telegram from Chief of Engineers to General Warren, dated July 23d, 1869, approving the course taken in stopping the work on the bridge.

Int. Did General Warren receive a communition from Chief of Engineers, dated July 31st, A. D. 1869, and, if so, please produce it?

Ans. He did receive a communication so dated from Chief of Engineers, and I now produce it; it is a letter stating that General Warren's suggestions and views in reference to the construction of the bridge had received the sanction of the Secretary of War, and that he, General Warren, was authorized to proceed with the masonry and pier work in accordance with his, Warren's, recommendation.

Int. Look at the letter now shown you, and attached to this your deposition, and marked "Exhibit B," and tell me if that is the next communication addressed by you to the contractors (bearing date the 23d of August, A. D. 1869)?

Ans. It is the next written communication, I believe.

Int. You have stated that the Chief of Engineers, by a communication dated 31st of July, 1869, authorized General Warren to pro-

ceed with the masonry and pier work. Why was there a delay of upwards of three weeks before any communication was made to the contractors to resume work?

Ans. There was only a delay until about the 30th or 31st of July. At that time I informed the contractors that orders had been sent to Singer & Tollcott to resume shipping stone, and directed them (the contractors) to be ready to receive it. It required till the 23d of August to make a thorough survey of the river at the sight of the bridge, and to adopt plans of the masonry.

Int. At what date did you furnish the contractors with the first plan in connection with this bridge?

Ans. I don't remember the exact date.

Int. Will you swear that it was earlier than the 4th of September, 1869?

Ans. I can't swear that it was earlier than that date.

Int. What did that plan relate to?

Ans. The Davenport shore abutment.

Int. Look at the letter dated September 13th, 1869, and now shown you, and attached to this your deposition, and marked "Exhibit C," and tell me if that is a copy of a letter addressed by Harvey & Livesey, the contractors, to General Warren?

Ans. I believe it is.

Int. Look at the letter dated September 14, 1869, and now shown you, and attached to this your deposition, and marked "Exhibit D," and tell me if it is in your hand-writing, and signed by you, and addressed to Messrs. Harvey & Livesey, the contractors?

Ans. It is not in my hand-writing, but it is signed by me, and addressed to the contractors.

Int. Look at the letter dated September 15, 1869, and now shown to you, and attached to this your deposition, and marked "Exhibit E," and tell me if that is a copy of a letter addressed by the contractors to General Warren?

Ans. It is.

Int. Look at the receipt written at the foot of such letter, marked "Exhibit E," dated 15th September, 1869, and now shown to you, and attached to this your deposition, and marked "Exhibit F," and tell me if such receipt is signed by General Warren, and in whose hand-writing the body of the receipt is.

Ans. The receipt is signed by General Warren, and all of it except the first three lines is also in his hand-writing.

Int. When did you next furnish the contractors with any other plan relating to these works?

Ans. I can't tell; the plans were furnished as they were required for the work. I have no memoranda that will fix the time when plans were furnished.

Int. Did you furnish any other plan, other than the one spoken of, during the year 1869?

Ans. I am not positive, but I think plans for cutting certain stone for the first pier were furnished in the fall of 1869.

Int. I mean, did you furnish the contractors with any plans for building any portion of the masonry besides the Davenport abutment, during the year 1869?

Ans. I think not.

Int. Did you understand when you took charge of the work that the contractors were, under this contract, to complete the work of the masonry by the 1st of December, 1869?

Ans. According to the contract, they were to complete the work 1st of December, 1869, under certain conditions; and, otherwise, they were to compete it as soon as possible.

Int. Was the delay in the furnishing of any other plan to the contractors other than the Iowa shore abutment, the fault of the contractors or the fault of the United States?

Ans. I don't understand that there was any delay in furnishing the plans for the contractors as fast as they needed them.

Int. Could they have completed the work with the one plan you had furnished them in 1869?

Ans. Certainly not.

Int. Had not more than half the time elapsed within which they were to have completed the masonry of this bridge before they were furnished with any plan at all?

Ans. I cannot say, because I do not remember the exact time when first plan was furnished. But they received such instructions that enabled them to go on with the work, on or about the 23d of August, 1869.

Int. Is it not customary to furnish contractors with a general plan of the works they undertake to execute?

(Objected to as immaterial.)

Ans. I believe it is, though in this case it was not necessary to their beginning and going on with the work.

Int. Have the contractors ever been furnished with a general plan of the work?

(Objected to as immaterial.)

Ans. They have never been furnished with plans of the entire work, because, first, no definite plans could be adopted of the entire work until within a few days of the time the Government took possession of the works. Secondly, because it was not necessary that they should have plans of the complete work, nor had they ever requested them.

Int. Did the contractors, immediately after their letter to General Warren of date, September 15, 1869, and marked "Exhibit E," attached to this your deposition, commence and build the coffer-dams of the Iowa shore abutment?

Ans. They did.

Int. When completed, and pumped out, and ready to receive the masonry, did you at once give them an order to proceed with laying the same?

Ans. It was not ready to receive masonry upon being pumped out, and they did not get an order to lay immediately.

Int. What was the cause of the delay?

Ans. There was a deposit of mud and tar from the sewer of gas-works, and loose shelly service of the rock bed of the river, and a clay seam, which had to be partially excavated.

Int. Did you require the contractors to remove and excavate the substances you have spoken of?

Ans. I required them to move them only sufficiently to lay the masonry.

Int. Did they do so, and how long were they about it?

Ans. They did. Can't remember how long, probably three or four days.

Int. Did you then order them to lay the masonry?

Ans. I did.

Int. Do you recollect General Warren being on the works of the Iowa shore abutment about that time with you?

Ans. I do.

Int. Did General Warren ask you why the masonry was not being laid in this abutment?

Ans. Not that I remember of; don't think he asked me any such question.

Int. Had not a portion of the rock bed of the river been cleaned off for a period of several days before General Warren came on the works there, and you gave an order to proceed with laying the masonry?

Ans. I cannot give a definite answer to this, because I don't remember the time of General Warren's first appearance at the work. The rock bed of river had been cleaned of the mud and tar deposited some days before the commencement of the masonry, but the shelly service of the rock bed had not been cleaned off several days and waiting for masonry when I gave the order to commence.

Int. At the time you gave the order to lay the masonry in this abutment, had not portions of the rock bed of the river been in the same state as it was when the masonry was laid for at least one week immediately previous to you giving the order?

Ans. No, sir.

Int. Do you recollect an unusual rise of the river in the month of October, A. D. 1869?

Ans. I do, that is for that season of the year.

Int. Do you recollect the height of that rise?

Ans. I believe the height of the water was about 12 two-tenths feet above low water mark, as recorded by our guage, but the rise itself was less than five feet.

Int. How soon after you gave the order to commence the masonry in the Iowa shore abutment was it that this rise took place?

Ans. If I remember correctly, this rise commenced before the oder was given.

Int. Did it overflow the works and stop further progress therein?

Ans. It did.

Int. How long did it delay the progress of such works?

Ans. About one month.

Int. Do you recollect any delay in the progress of these works in the month of November, 1869, for want of cement?

Ans. I remember very distinctly, there was no delay for want of cement, as far as my knowledge goes.

Int. Was not your department out of cement about the 10th or 11th of November, 1869?

Ans. It was. On the 11th of November, about 3 o'clock, p. m., I went to the Iowa-shore abutment for the purpose of stopping the work on account of the cold weather. I directed Mr. Livesey, the contractor, who was in personal charge of the work, to stop until the sun had come out warm the next morning, unless it moderated. At that time he said to me, let me use up this batch of mortar before stopping. He then said that the cement was out, or words to that effect. I said to him, you shall not be delayed for want of cement. The cement was purchased and sent to the work by the time they were ready to begin next morning. I remember distinctly about this circumstance, because there appeared in the Davenport Gazette a statement that the work had been stopped because of the failure of the United States to furnish cement. This statement was corrected at my request, and I asked Mr. Livesey, the contractor, where the reporter got that statement. He replied that he did not know, and said that he supposed some of the laborers thought that the work had stopped on that account, and probably gave the item to the reporter, or words to that effect.

Int. Were all the other works, or any portion of them on the island, stopped that day on account of cold weather?

Ans. I do not know whether they were or not; there were no other works in my charge.

Int. In your judgment, was the delay caused to the contractors by your letter of 22d of July, 1869, and marked "Exhibit A," and attached to this deposition, which requested them to stop all work, a circumstance that could have been foreseen by them at the time they executed the contract?

(Objected to as immaterial or incompetent.)

Ans. It could not have been foreseen by them.

Int. In your judgment, was the delay of one month caused to the contractors by the unusual rise of the river in the month of October, 1869, a circumstance that could have been foreseen by them at the time they executed the contract?

(Objected to as incompetent and immaterial.)

Ans. Certainly not.

Int. Do you know of any delay on the part of the contractors during the year 1869 in prosecuting the works as far as they could, considering that they were only furnished with one plan, and only a part of the materials had been furnished by the United States?

Ans. I do. The first delay was of three weeks' duration from the 23d of August, the day they were informed that the position of the Iowa-shore abutment had been marked and was ready for them to

commence construction, until September 15th, the day when the contractors began to build the first coffer-dam. After that, the delay of one month, caused by the flooding of their dam, was entirely unnecessary and improper, after they had commenced. The masonry, after the subsidence of the flood, was not carried on with proper energy. The fact of their being furnished with but one plan had nothing whatever to do with the rapidity of their work, for if they had been ready for more work they would have had more plans. As for the material that had been delivered, it was greatly beyond, in quantity, their demand for it.

Int. Do I understand you, then, that if the contractors had used greater expepition in 1869, you were then ready to furnish them with more plans?

Ans. Certainly, they should have had more plans, and as fast as they needed them.

Int. Did you make any complaint, in writing, to the contractors of these delays on their part?

Ans. I think not. I had frequently made complaints verbally.

Int. Look at the letter dated February 16th, 1870, and attached to this your deposition, now shown to you, and marked "Exhibit G," and addressed to Mr. James Livesey, one of the contractors, and tell me whether it is in your hand-writing, and signed by you?

Ans. It is in my hand-writing and signed by me.

Int. It that letter you stated "we are not yet able to decide on our plans for the masonry definitely, which is very provoking with the spring so near at hand." Is it true that at that date, February 16, 1870, the plans for this masonry had not been decided upon?

Ans. It is true.

Int. Then, is it the fact that the United States entered into a contract with Messrs. Harvey & Livesey to complete the masonry of this bridge by the first of December, 1869, and required them to find sureties in the sum of $60,000 for the due performance of their contract, and that on the 16th day of February, 1870, the United States had not been able to decide on the plans for the masonry difinitely?

Ans. It is a fact; the explanation of which is, that the contract was made by General Rodman, and before he had made his plans the charge of the work was transferred from him to General Warren; there was certain points in the plan of General Warren which were objected to by General Rodman.

Int. Could the contractors have foreseen or controlled these alterations in the plans?

Ans. There were no alterations of plans, so far as I know, no definite plans having been adopted previous to General Warren's plans.

Int. If, as stated in your letter of 16th of February, 1870, you had not then been able to decide on the plans definitely, how could you have furnished the contractors with more plans in the year 1869, if they had proceeded with greater rapipity?

Ans. Easily enough, as some of the plans were determined, and

would have been given to them if they had been ready to execute them.

Int. Is it not customary in works of this magnitnde to furnish the contractor with a general plan of the whole works at once, or soon after his commencing his contract, so that he may be able to work to the best advantage at either or any portion of the works, at all stages of water, where it may be most advantageous to work?

Ans. I do not know whether it is or not, but I should think not in a case where the general plan was not, and could not be, known.

Int. Did you ever know an architect to permit a contractor to commence works until all the plans of such works and detailed drawings were complete?

(Objected to as immaterial and incompetent.)

Ans. I do not know about architects either doing it or not doing it.

Int. When or at what date were you able to decide on the plans for the masonry, definitely?

Ans. We were able to decide upon all the plans of the river masonry, that is the masonry that stands in the water, some time in April or May, A. D. 1870, I think, I am not positive.

Int. Do you recollect an unusual and unprecedent rise of the river in the month of April, 1870?

Ans. I remember an unusual, but not an unprecedented rise in the month of April, 1870; the highest was a little over ten feet above low water mark, as recorded by our gauge. In or about the year 1828, the river was reported to have been fourteen inches higher than this.

Int. Did this rise in April, 1870, delay the contractors in the prosecution of their work, and for what period?

Ans. It did delay them for from two to three weeks I believe.

Int. Was there an unusual rise for that season of the year in the month of September, A. D. 1870.

Ans. This rise was greater than the average of years?

Int. Did it delay the contractors in the prosecution of their work, and for what period?

Ans. It did delay them in their river work something over two weeks; that is, it delayed them, actual delay by the high water, but more than that considerably by the sweeping away of a dam.

Int. During the time these works were in progress under the contractors, did they complain to you of a want of proper and suitable stone to enable them to make the peculiar bend required by you on the starlings or noses of the piers?

Ans. There was some complaint at the delay of some of these stone, but no complaint of their delaying the work or hindering it in any way.

Int. Please give me the quantities of stone furnished to you by the contractors for stone, during each month in the year 1869?

The hearing of the said witness was adjourned at the hour of five o'clock, p. m., of the 13th day of February, to nine o'clock, a. m., of

February 14th, at which the hearing of said witness was continued. In answer to the last interrogatory he says:

"The estimated quantities of stone received from Singer & Talcot according to the records in my office are, for—

June, 1869,	1025	cubic yards of	Bridge stone.
July 1869,	1040	"	"
Aug., 1869,	379	"	"
Sept., 1869,	1345	"	"
Sept., 1869,	119	"	Rubble stone.
Oct., 1869,	342	"	Bridge stone.
Oct., 1869,	119	"	Rubble stone.
Total,	4,369	"	

Int. Is that all the stone, viz: 4,369 cubic yards, that was obtained by the United States towards the construction of the Rock Island bridge during the year 1869.

Ans. That is all that I have any knowledge of.

Int. Please give me the quantities of stone furnished to you by the contractors for stone during each month of the year 1870?

Ans. The estimated quantity according to the records in my office are, for—

June, 1870,	369	cubic yards of	Bridge stone.
July, "	1310	"	"
Aug., "	89	"	"
Sept., "	259	"	"
Oct., "	281	"	"
Total,	2,308	"	"

This is all that was delivered during the year 1870.

Int. What number of cubic yards of stone was obtained from the contractors for stone during the two years of 1869 and 1870?

Ans. 6,677 cubic yards.

Int. Is that the whole quantity of stone which the United States have obtained and furnished the contractors towards execution of their contract?

Ans. That amount, to wit: 6,677 cubic yards, includes 256 cubic yards that was unloaded from the cars after the Government took possession of the work, therefore the contractors had been furnished with 6,421 cubic yards up to the time Government took possession of the work.

Int. Was Mr. Whitton your foreman of stone-cutters at the time the Government closed the works on this bridge in December, 1870?

Ans. He was foreman of stone-cutters at that time. He was employed to measure the stone received from Singer & Talcott, and to measure the stone dressed by Messrs. Harvey & Livesey.

Int. In his testimony, taken before Mr. Com. Thorington, Mr. Whitton has stated that the stock of stone on hand and unused at the time of the Government closing the works in the month of December, 1870, was from 250 to 300 cubic yards. Is that statement correct, so far as you know?

Ans. I believe it is, although I do not know accurately the number of cubic yards of stone remaining in the yards.

Int. Mr. Weston has stated in his testimony, taken before Mr. Commissioner Sweeney, that during the time the Government had charge of the works there were 3,076 cubic yards of masonry set in the piers and abutments. Is that statement correct, as far as you know?

Ans. It is.

Int. Mr. Weston has also stated in his testimony that during the time Messrs. Harvey & Livesey, the contractors, had charge of the works there were 4,156 cubic yards of masonry set by them in the piers and abutments. Is that statement correct, so far as you know?

Ans. It is; that is about the amount, as I remember.

Int. From the figures named in the three last interrogatories, please give me the total amount or number of cubic yards of stone set in the piers and abutments and remaining on hand.

Ans. About 7,500 cubic yards, or a little more.

Int. Did the Government obtain stone from any other source than from Messrs. Singer & Talcott for these works?

Ans. None that I know of.

Int. How is it that 7,500 cubic yards, or a little more, of stone, have been set in the piers and abutments and is on hand, and yet only 6,677 cubic yards were obtained from Messrs Singer & Talcott?

Ans. My reply to your questions concerning the amount of stone in the piers and abutments, I understood you to mean the amount of masonry in the piers and abutments; said masonry includes a certain amount of cement and sand, which will explain how that the finished work can and does measure more than the naked stone used in the work.

Int. Does not the contract stipulate these words, "the masonry to be measured by taking the cubical contents of the finished work, excluding all technical and constructive measurement?"

Ans. The duplicate now before me does.

Int. Would not such a mode of measurement as prescribed in the contract exclude any allowance for cement or sand?

Ans. It would not according to my understanding of it. As I understand that clause in the contract, the masonry for each pier is to measured by taking the cubical contents of the pier as it stands when finished by the contractors.

Int. The actual number of yards of stone set in the piers and abutments, according to the testimony of Mr. Weston, is 7,232 cubic yards, the actual number of yards of stone received, exclusive of the quantity stated by Mr. Whitton in his testimony to be on hand, is 6,402 cubic yards, showing a discrepancy of 830 cubic yards. Do I

understand that this discrepancy is caused by the amount of cement and sand used in the piers and abutments?

Ans. The most of it is caused by cement and sand, and probably a very small portion of it arises from inaccuracies in the measurements taken of the rough stone as it comes from the quarry.

Int. Does not the stone that is dressed measure less in quantity, after it is dressed, than when rough stone, as it comes from the quarry?

Ans. Certainly it does.

Int. Can you tell me the materials of which solid bridge masonry is composed: I mean the solid masonry of which the piers and abutments of this bridge is composed?

Ans. It is composed of limestone, hydraulic cement, sand, water, and the iron dowells and clamps used to hold the stone together.

Int. Does that comprise the whole of the materials used in the solid masonry of the bridge?

Ans. I believe it does. I don't think of any other material.

Int. Please tell me the materials of which the coffer-dams built by Messrs. Harvey & Livesey, the contractors, were composed?

Ans. They are composed of wood, iron, sand, and gravel. I believe nothing else.

Int. Please tell me the material of which the protections of the coffer-dams were composed.

Ans. They were composed of wood, iron, and stone.

Int. Does the work of constructing the coffer-dams include the work of necessary excavations at the bed of the river?

Ans. Coffer-dams do not require excavations at all.

Int. Were there any excavations made on the bed of the river in the coffer-dams?

Ans. There were.

Int. Were these excavations connected with the work of solid masonry or were they connected with the work of building coffer-dams?

Ans. They were necessary in order to place the masonry on the solid rock bed of the river.

Int. You have repeatedly told me that the work of solid masonry comprised limestone, hydraulic cement, water, sand, and the iron dowells and clamps used to hold the stone together. I again ask you if these excavations were connected with the work of solid masonry paid for by the cubic yard, or were they connected with the work of building coffer-dams?

Ans. To give a clear statement concerning these excavations, my reply is this: The contract required the masonry to be placed on the rock bed of the river; the manner of reaching the rock bed of the river was a matter of little or no consequence to any one but the contractors who were doing the work; they chose to excavate to reach the rock bed of the river in order to put their masonry upon it.

Int. Who ordered the contractors to excavate to reach the rock bed of the river?

Ans. I don't remember of any body ordering them to do it; they requested that the United States should, among other things, prepare the beds for the piers; this request was not complied with, the United States holding that, by the terms of the contract, this was the duty of the contractors.

Int. Is the work of solid masonry and the work of building coffer-dams and their protections, two different classes of work?

Ans. They are.

Int. Then please tell me to which class of work the excavations to reach the rock bed of the river belong?

Ans. In this case the excavations are very properly a part of the labor of building the piers.

Int. Please tell me to which class of work the excavations to reach the rock bed of the river belong?

Ans. In the case now under consideration, namely, the construction of the piers and abutments of the Rock Island bridge, where the necessity exists of placing the masonry upon the solid rock-bed of the river, the means of getting the masonry upon the rock-bed of the river, that is, the uncovering of the bed, appears to me very clearly to belong to the work of constructing said masonry.

Int. You have said that the materials of which coffer-dams are built are wood, iron, sand, and gravel. How much sand was used by the contractors in the construction of the coffer-dams built by them?

Ans. I can't say; but I should think they will average 800 or 900 yards of filling to each dam.

Int. You have said that materials of which the protection of the coffer-dams are composed are wood, iron, and stone. How much stone was used by the contractors in the construction of the protections of the coffer-dams built by them?

Ans. About 50 cubic yards of loose stone to a crib. I think there are somewhere between 15 and 20 cribs.

Int. How many coffer-dams were built by the contractors?

Ans. There were eight entire dams and three parts of dams.

Int. Did the Government furnish the contractors with the sand or any portion of the sand for the filling the walls of the coffer-dams?

Ans. It did not.

Int. Did the Government furnish the contractors with the stone, or any portion thereof, used in the construction of the cribs or protections to the coffer-dams?

Ans. The Government did not furnish any of this stone, but the contractors took stone out of the stone-yard to build some of their cribs.

Int. Did that stone belong to the Government?

Ans. The stone had been paid for by the Government in partial payments to Singer & Talcot, to the best of my knowledge and belief.

Int. How many, or what quantity, was taken by the contractors from the stone-yard to put in the cribs?

Ans. I don't know.

Int. Was there any?

Ans. I think there was.

Int. Tell me, as near as you can, the quantity taken.

Ans. I dont know; I can't form an idea.

Int. Were there 50 yards or 100 yards so taken?

Ans. I paid no attention to the amount, and therefore cannot state.

Int. Have you paid Messrs. Singer & Talcot for all the stone you have obtained from them, making the same measurements of stone set in piers and abutments as previously stated by you in this deposition?

(Objected to as immaterial.)

Ans. We have paid them for all stone received and on measurement, taken before the stone was unloaded from the cars.

Int. Does not their contract for furnishing stone state that they shall be paid for stone according to the measurement of the masonry work in the piers and abutments, and in the same manner that the contractors for masonry were paid for completed masonry?

(Objected to as immaterial and incompetent, contract being in writing.)

Ans. They were to be paid for stone, measurements being taken of the completed work; but in making partial or monthly payments, they were always paid on measurements of the stone as it arrived from the quarry.

Int. Have you paid Singer & Talcot for all the stone obtained from them less 10 per cent. retained?

(Objected to as immaterial.)

Ans. We have, I believe.

Int. If the measurement of the stone in the piers and abutments amounts to 7,232 cubic yards, and you say that the amount of stone paid to Singer & Talcot, (6,677 yards,) and this includes the quantity on hand, how can the Government have paid for the stone you say the contractors took from the stone-yard to use in the cribs?

(Objected to as immaterial.)

Ans. The number of yards in the finished masonry, as I said before, includes other material than the stone.

Int. Please give me the number of superficial feet in the dressed corners of the Iowa shore abutment.

Ans. 726 six-tenths feet, according to the estimates in my office.

Int. Give me the number of superficial feet of coping dressed by contractors on top bed.

Ans. It is about 3,796 superficial feet.

Int. Give me the amount of superficial feet of stone dressed by contractors two feet below low water.

Ans. There is no record in my possession or under my control, of

the amount of this work done—no separate record of it was kept, in my knowledge.

Int. Give me the number of superficial margin drafted work cut by the contractors for the abutments on the Iowa and island sides.

Ans. 2,241 feet, from the records in my office.

Int. Give me the number of lineal feet of drilling done in stone not set, on the 8th of October, 1870.

Ans. I do not know, no record of it having been kept.

Int. Tell me, as near as you can, the number of lineal feet of drilling so done.

(Objected to as incompetent, calling for opinion of witness.)

Ans. I could give no idea; no record whatever was kept, as I know of.

Int. Did you, at any time, speak to Mr. Harvey, one of the contractors, with reference to the extra cost of dressing the margin drafted work?

Ans. I did.

Int. How much did he tell you such extra cost would be?

Ans. The price agreed upon between the contractors and myself was 75 cents per superficial foot for the work in the abutments; that is, after it was set.

Int. Did you speak to Mr. Harvey at all with reference to setting the stone when he gave you the price of 75 cents per foot, and did he not then also tell you that he did not wish to agree to that price for extra dressing until he had seen his partner, Mr. Livesey?

Ans. I do not remember talking with him much about it. He did make some allusion to Mr. Livesey when he conversed about it. It was thoroughly understood at the time, however, that the price of 75 cents per foot was the entire extra cost of the work. Mr. Livesey, in speaking to me afterwards, and when I demurred to the price named, stated that it was worth 25 cents per foot of the 75 cents, to set it.

Int. Did Mr. Harvey state to you that he would rather give you 25 cents per foot than do the extra dressing for the price agreed on, so that they, the contractors, could get on with the other work?

Ans. I do not remember of his making any such offers, and hardly think that he would have made such an offer, when it was in his power to ask any extra price he chose for the extra work, which I had no power to compel him to do, it not being a part of his contract.

Int. Did you, at the commencement of October, A. D. 1870, pay the contractors for dressing 1,559 superficial feet of stone at 75 cents per foot, as agreed?

Ans. We did, with the understanding that that was the total extra payment for that amount of that work.

Int. How much of that stone had been set at the time you made this payment?

Ans. That I can't tell; there was considerable of it not set.

Int. You having stated that the price agreed upon between the

contractors and yourself was 75 cents per superficial foot for this extra dressing of stone, that is, after it was set, how came you to pay them for a considerable quantity of such stone that was not set at the time you made the payment?

Ans. Because there was not a very large amount involved and I did not care to divide the extra work into two items. The greater portion of this extra work on these stone had been done.

Int. You said just now that, when you made this extra payment, you did it with the understanding that that was the total extra payment for that amount of that work. Who did you make this understanding with?

Ans. I made no understanding with any one. I never had any reason to doubt that the contractors understood it exactly as I did until after the Government took possession of the work, and in settling up with the contractors for work done, I would only allow them fifty cents per superficial foot for that portion which had not been set. In making the payment for September, nothing was said by the contractors, nor did they intimate in any way, that they expected to receive more than they agreed upon, 75 cents per foot, for the finished work.

Int. At the time you made this payment for the September works, did you not then contemplate taking the works out of the contractors' hands?

(Objected to as immaterial.)

Ans. We did.

Adjourned until 9 o'clock, a. m., of the 15th day of February, A. D. 1871.

And now, on this 15th day of February, A. D. 1871, at the hour of 9 o'clock, a. m., the taking of the deposition of the said Amos Stickney was resumed.

Int. Then why did you pay the contractors a sum greater for dressing the stone than what you considered they were entitled to, according to the terms of the agreement you have stated you made with them?

Ans. The payment was made on an estimate that was previously made up from the record of the stone dressed. This was not the final payment. Before the Government took possession of the work, the amount of this dressed stone that had been set was not known at that time, because the extra work on this stone, as I said before, was not kept in two items.

Int. Was it afterwards kept in two items?

Ans. Only a few days' work was done after the 30th of September. When the Government took possession of the work, the difference between the amount dressed and the amount set was ascertained.

Int. Did you then make an agreement with the contractors that they were to be paid a less sum than 75 cents per foot for this extra dressing of stone?

Ans. The only thing that could be called an agreement was my refusal to pay the full amount for only a portion of the work and their acceptance of the amount allowed.

Int. When did they accept the amount allowed?

Ans. I cannot say when, exactly; they at first declined to accept it, and afterwards did.

Int. Did they give you a complete discharge from all claims they may have for this extra dressing of stone, at the time you state they accepted the sum you offered?

Ans. They signed an acknowledgment of having received the money in payment of the account.

Int. Please produce the acknowledgment they so signed.

Ans. I produce it.

Int. These are the words printed at the foot of the document now produced by you: "In full payment of the above account." Do you mean that the contractors, having signed the acknowledgment which contains these words, that that is an agreement on their part to accept a less sum for extra dressing of these stones than was originally agreed upon?

Ans. There was no sum agreed upon for the mere extra dressing of this stone separate from the amount agreed upon for dressing and setting, therefore, this cannot be said to be an agreement to accept a less amount than that agreed upon for a certain portion of the work for which no separate price was fixed. It is, however, an acknowledgement of having received full payment for the work mentioned in the account.

Int. Would you have paid the contractors the amount you did had they signed the form of voucher with the words, "in full payment of the above account," struck out?

Ans. I would not.

Int. Look at the document now shown to you, and attached to this your deposition, marked "Exhibit H," and tell me if that is a copy of the voucher obtained by you from the contractors at the time you paid them for dressing 1559 superficial feet of stone?

Ans. It is a copy of such voucher for the sum paid to them for the extra work on said stone.

Int. Please give me the average depth of the five small piers, draw pier, and island shore abutment from low water to the bottom of the masonry?

Ans. Supposing the bottom of the river at the site of pier number five to be 20½ feet below low water, which is about the depth according to our present information, the average of the depth of the places mentioned is about 9.3 feet.

Int. What amount of masonry would there be according to the plans now in use in the five small piers, draw pier, island shore abutment, and Iowa land abutment?

Ans. Estimating the Iowa land abutment to contain 675 nine-tenths cubic yards, and pier number five to contain 900 cubic yards, there would be about 7540 cubic yards. This is the total amount

of masonry, excepting the Iowa shore abutment and the Rock Island land abutment.

Int. Please give me the amount of masonry there would have been in the bridge if the plans of General Rodman had been adopted, such amount of masonry being calculated upon the same average depth of, viz: 9.3 feet?

Ans. General Rodman, to the best of my knowledge, had made no definite plans for the masonry of the bridge. In turning over the work to us, he gave us copies of different plans he had made of portions of the work; these copies, however, are not made in such a manner that would enable me to furnish the information desired.

Int. Have you ever, or has General Warren, or any person by his authority, to your knowledge, made any calculation from such plans or copies of plans as furnished by General Rodman as would enable you to ascertain the amount of masonry there would have been in such bridge if those plans had been adopted?

Ans. No, sir. I once directed calculations to be made from these copies by one of the assistants in our office, but he informed me that the calculations could not be made, as these copies were evidently not intended for calculations, but simply to give a general idea of the plans—they being what might be called trial plans.

Int. Do I understand you, that you did not receive any complete plans from General Rodman of the bridge he had designed at the time you were placed in charge of these works?

Ans. We did not receive any complete plans, General Rodman stating to me that he had not, as yet, adopted any definite plan, and in fact he could not have adopted any definite plan, because the act of Congress required a certain style of bridge to be built for a certain specified sum of money, which sum would not build that kind of bridge.

Int. Did General Rodman, or any official of the Government, tell you the probable amount of masonry there would have been in the bridge if General Rodman's plan had been completed and adopted?

Ans. Not to my recollection.

Int. Please tell me the number of yards of masonry in the draw pier and in all the other piers and abutments of the bridge now being built?

Ans. In draw pier there are three pieces of masonry; the upper starling and rest wall contain 1,263 cubic yards; the pivot masonry contains 1,010 ten-twenty-sevenths cubic yards; the lower rest wall and starling contain 488 fourteen-twenty-sevenths cubic yards.

No 1	512,4.27	cubic yards.
" 2	685,2.10	"
" 3	538,9.10	"
" 4	647,2.10	"
" 5 estimated at	900	"
Iowa land abutmet estimated at	675,9.10	"

Iowa shore abutment, when finished, estimated at	718	cubic yards.
Island land abutment estimated, when finished, about	234	"
Island shore abutment, when finished, about	827	"

Int. From the information you derived as to the character and style of the bridge designed by General Rodman, do you believe that such bridge, if built, would have contained a greater amount of masonry than the bridge now being built, deducting the two extra piers not included in the designs of General Rodman?

(Objected to as incompetent and immaterial.)

Ans. According to my opinion of Genl. Rodman's ideas, I think there would have been more masonry in the piers that he would have built, than in those that are now being built, after deducting the two mentioned.

Int. Were you present at any interview between the contractors and Col. Macomb, in the year 1870, when the subject of an allowance to be made to the contractors for this reduction in the amount of masonry caused by the change of plans was discussed?

(Objected to as immaterial.)

Ans. I have had several conversations myself with the contractors on this subject, and I may have been present at an interview between them and Col. Macomb. I do not recollect positively of such an interview.

Int. Please state the substance of the conversations you have had with the contractors on this subject.

(Objected to as incompetent and immaterial.)

Ans. The contractors have stated to me that the masonry, according to our plans, was greatly reduced from what it would have been according to the plans of Genl. Rodman, and complained that this reduction bore hard upon them especially, because the main amount of the reduction was in backing on rough work, and they requested that they should be allowed more pay for the work done in order to make up for the difference in the quantity. I told them that we could not pay except in accordance with the contract, but that I was willing to recommend that they should receive some compensation for this difference; that is about the gist of our coversations on that matter.

Int. Please give an account of the amount of work done by the contractors each month in the year 1869, in connection with the building of the masonry of this bridge, specifying each class of work, and its value?

Ans. The first account of work done according to the record, is dated September 9th, A. D. 1869, of work that had been previously done, viz: unloaded from cars about 2500 yards of stone, cut; 900 yards of stone. This is the only record I have of stone cut by the contractors since the commencement of their contract.

The next account I have, dated September 30th, A. D. 1869, which

is as follows: cut and prepared 1500 yards of stone, at $3 per yard, $4,500; received 3,700 yards of stone, at $1 per yard, $3,700; lumber in dams and cut, $600; iron for same, $800; total, $9,600. The above statement of work was given to me by the contractors, upon which they requested a payment of $7,000, they having been previously paid $2,500.

The next account is dated November 13th, 1869, and is entered on my record, as follows:

700 yards of masonry completed, (abutment,) at $11	$7,700 00
3,669 yards of stone received and handled, at $1	3,669 00
The amount expended in cutting stone, exclusive of abutment	4,600 00
Lumber and iron for coffer-dams	1,800 00
129 yards of sand, at 65 cents	83 85
Total	$17,852 85
Ten per cent. off	1,785 28
Leaving	$16,067 57
Previous payments	9,500 00
Leaving	$6,567 75

This statement of work done was given to me by the contractors, with the request that a payment of $6,000 be made to them. This statement I transmitted to General Warren, with these remarks:

"You will notice there is an item of $1,800 for lumber and iron for coffer-dams. I objected to that, but Mr. Harvey explained that he had paid out that much money for it, and it is an item that may be included in the final payments of $11 per yard for the finished masonry; that is, that it is a necessary preliminary item, the same as receiving and cutting stone; with that understanding, I recommend that they be paid $6,000."

Int. The figures you have just quoted show an account of $17,852.85; from whom or from what information, did you obtain the items that comprise it?

Ans. The first item was based on the supposition that the abutment would be completed before receiving the reply to my letter from General Warren, who was then in St. Paul, that number of yards being the estimated amount that would be contained in the abutment. In the second item the number of yards was obtained from the records in my office, and the price per yard was given to me by the contractors as the cost of receiving the stone.

The third and fourth items were obtained from the statement of the contractors, and the fifth item from the records in my office.

Int. Was the statement you allege as having been made to you by the contractors in reference to these items, referable to the sums they

had actually paid out in connection with the work they had done, without calculating any allowance or per centage of profit, or for their outlay for machinery, tools, &c.?

Ans. They stated that was the cost of the work.

Int. Do you consider it right to make an estimate of payments to be made to contractors upon a basis of actual cost to them of the work they had done?

(Objected to as immaterial.)

Ans. That depends on the agreement made in reference to payments.

Int. What was the agreement in this case, as you understand it?

(Objected to as incompetent and immaterial.)

Ans. The agreement is, according to the contract, "payments in such funds as the Treasury Department may provide, at the rate of $13 per cubic yard for all masonry in the draw-pier, and at the rate of $11 per cubic yard for all other masonry, the masonry to be measured by taking the cubical contents of the finished work, excluding all technical and constructive measurements. Payments to be made monthly on the amount of work done during the month, when funds are on hand."

Int. Did the contractors do any work under this contract in the month of June, A. D. 1869?

Ans. I do not certainly know that they did any work. When the work was turned over to the Engineer Department, a certain known amount of stone had been received, and I believe some stone had been cut, but I do not know the amount.

Int. Do the records in your office show that any payment was made the contractors in July, 1869, for work done in the month of June, 1869?

Ans. Not that I know of.

Int. Did the contractors do any work under their contract in the month of July, 1869?

Ans. They did do work in July, 1869.

Int. Were they in the month of August, 1869, paid on account of the work done by them in the months of June and July, 1869?

Ans. Not to my knowledge.

Int. Did they do any work under this contract in the month of August, 1869?

Ans. They did.

Int. Were they paid in the month of September, 1869, for the work they had done in the months of June, July, and August, 1869?

Ans. They received a payment on account of work done about the 10th of September, of about $2,500.

Int. Did not the contractors claim that they were entitled to be paid monthly, pro rata, upon the amount of work done?

Ans. I don't believe they made any claim at all about payments at that time; they asked for $2,500 and it was paid to them on my recommendation.

Int. Did they, subsequently and during the year 1869, claim to be paid pro rata upon the amount of work done during each month?

Ans. They did, including in their claim also that they should be paid for materials for coffer dams.

Int. Why did you not pay them upon the basis of a pro rata rate, on the amount of work done each month?

Ans. General Warren, the disbursing officer of the appropriation for the bridge, held that, according to the terms of the contract, he was to make monthly payments upon the amount of masonry finished during the month. No masonry was finished previous to September, A. D. 1869.

Int. As General Rodman made this contract with Harvey & Livesey, did General Warren, to your knowledge, about the month of September or October, ascertain from him, General Rodman, what was meant included in the words "payments to be made monthly on the amount of work done during the month?"

Ans. I do not know whether he did or not.

Int. Did you?

Ans. Not to my recollection.

Int. Look at the letter now shown to you, and marked "Exhibit I," attached to this your deposition, and tell me if that is a copy of a letter dated January 31st, A. D. 1870, addressed by General Humphreys, Chief of Engineers, to General Warren?

Ans. It is a copy.

Int. Look at the copy of the letter now shown to you, marked "Exhibit J," attached to this your deposition, and tell me if that is a copy of a letter dated February 19th, 1870, addressed by General Warren to the contractors?

Ans. It is a copy of a copy of such letter in my possession.

Int. Look at the copy of the letter now shown to you, and marked "Exhibit K," attached to this your deposition, and tell me if that is a copy of the letter dated June 4th, A. D. 1870, addressed by you to the contractors?

Ans. It is a copy of such letter.

Int. The account stated in the letter marked "Exhibit J," from General Warren to the contractors, dated February 19th, A. D. 1870, shows that the value of the work done by the contractors in 1869, was $13,200.17, and they having been paid $14,500 on account of their contract, they had been overpaid; the account stated in the letter marked "Exhibit K," from you to the contractors, dated June the 4th, 1870, shows that the value of the work done by the contractors in 1869, was $16,407.10, after deducting 10 per cent. retained, and that, therefore, they were not fully paid up for their work done in 1869. Please explain the basis on which this revised estimate was made, and why it was that such basis could not have been arrived at earlier than June 4th, 1870, the contract after having been made first of June, 1869, and the contractors having commenced their work a few days afterwards?

Ans. The basis on which that revised estimate is made is contained

in the "Exhibit K," and I can best answer the latter part of the question by making a statement concerning the payment, which is as follows:

According to General Warren's views, the contractors were not entitled to any payment before the completion of some masonry, and then they were to be paid at the rates fixed by the contract for finished masonry. Upon receiving the letter from the Engineer Department, dated January 31st, 1870, and marked "Exhibit I," he, General Warren, made an estimate according to the instructions contained in that letter, but placed the price on the preparatory work at the price I had given him as the cost of the work, which I suppose he thought was my estimate of the value of that work. At this time General Warren was in St. Paul and I was in Rock Island. Upon a reconsideration of the subject, which was induced by an interview between him and the contractors sometime in May, A. D. 1870, he directed me to reconsider the whole subject and make out a basis for making payments to the contractors; this I did, the result of which was the basis contained in my letter to Messrs. Harvey & Livesey, dated June 4, 1870, marked "Exhibit K." Upon presenting this to General Warren, he approved of it, and directed me to make out a new estimate on this basis of the work done during the preceding season.

Int. Before you arrived at this basis did you consult with the contractors on the subject?

Ans. I believe I did not, having received no instructions to do so.

Int. Tell me the source of information by which you arrived at this basis?

Ans. The contract and the letter from the Engineer Department, dated January 31st, 1870, marked "Exhibit I."

Adjourned the taking of the foregoing deposition until 9 o'clock, a. m., of the 16th day of February, A. D. 1871.

Resumed the taking of the deposition of the said Amos Stickney, at 9 o'clock, a. m., of February 16th, A. D. 1871.

Int. The estimate contained in your letter of June 4, 1870, marked "Exhibit K," shows that there were 3,823 cubic yards of stone on hand exclusive of that used in abutment, at the end of the year 1869. How much of that stone was fit for cut stone, and had not been cut by the contractors at that date; that is, the quantity that was fit for cutting, and so marked by your inspector?

Ans. The only answer I can give to this is, that I can't tell how much there was fit for cutting. I know there was some.

Int. What proportion of the masonry is faced work, and what proportion is backing?

Ans. I think that they are about equally divided; that is, about one-half of the masonry is faced work.

Int. How much stone was there prepared, ready for laying and on hand at the end of the year A. D. 1869?

Ans. There was 1,517 cubic yards, about, that had been dressed

and was ready for face-work. As the amount of backing and faced work is about equal, it is proper to say that there was about same quantity of rough stone which had not been dressed at all, that could be laid as backing to the first amount.

Int. Then do I understand you that there were 3,034 cubic yards, or thereabouts, prepared, ready for laying?

Ans. Not exactly that; there had been only about 1,500 yards prepared.

Int. Was any further preparation necessary to be made to the stone to be used for the backing than was at that time done; and, if any, what further preparation?

Ans. No preparation was needed for the stone to be used as backing.

Int. Is it more expensive to set a rough stone for backing than it is to set a faced stone?

Ans. It is not.

Int. When and where did you acquire your knowledge of masonry?

Ans. At the United States Military Academy at West Point, at the construction of Fort Monroe and Fort Wool, Fort Winthrop, and Fort Independence, besides such information as I have got from reading.

Int. How long were you engaged at the forts you have named, and what position did you hold there?

Ans. I was on duty at Forts Winthrop and Independence, Boston harbor, for about five months, and Forts Monroe and Wool, in Hampton Roads, about a year, and held the position of assistant engineer.

Int. Do you understand the practical part of masonry?

Ans. Not thoroughly.

Int. What kind of band is it that is used in the masonry of the piers of this bridge?

Ans. The band which the contractors were required to make was at least twelve inches in the vertical joints of the faced work of the principal portion of the masonry in the sloping courses of the starlings. They were required to cut each stone in accordance with plans given them, the band being one foot or more.

Int. What name do you give to such a band?

Ans. I know of no technical name for it.

Int. How many kinds of bands are there in masonry?

Ans. There may be any number, according to the plans required for the stone.

Int. Do you mean to say, that you cannot tell what the name of the band is that was used in this bridge?

Ans. I do not know any technical name for it.

Int. What is the average amount per cubic yard allowed by you to the contractors for work done in preparation of stone ready for laying?

Ans. I never made any average. I allowed a certain price for one kind of work, and another price for another kind of work.

Int. If the price you allowed for receiving stone is $1.35 per yard on say, 3,000 cubic yards received, and the price you allowed for dressing 1,500 cubic yards of that same stone is $4.60 per cubic yard, would not the average amount allowed by you for work done in preparation of such 3,000 yards of stone ready for laying be $2.97½ per cubic yard, as you have said that the proportions of faced stone and backing are about equal?

Ans. My answer is, that that is not the average, according to my figures. I make it $3.65 per cubic yard.

Int. What proportion does the preparation of stone ready for laying bear to the work of finished masonry in the pier?

Ans. That is very indefinite in this kind of work, because, if the difference in the latter work named, which would be occasioned by different circumstances in high water, larger dams would have to be built than in low water, and the higher the dam the greater would be the actual labor of laying.

Int. Is it more difficult to lay masonry in the dams when the water is high than when it is low?

Ans. It is. That is, the labor is greater.

Int. In my question as the proportion which preparing stone bears to the laying of completed masonry, I made no allusion to dams. I wish to know what proportion of work there is in the preparation of stone ready for laying to the work there is in the actual laying of the masonry?

Ans. That will vary a little with circumstances, such as the depth of the dam, kind of machinery used, &c., but I should think the mere cost of taking the stone from the yard and setting it in the piers would be about one-half of the cost of previous proportion.

Int. Then, if you allowed on an average $3.65 per cubic yard for preparation of stone ready for laying, one-half of such amount which you would allow for laying would be 1.82½ per cubic yard?

Ans. That was not exactly my idea. I meant the cost of setting the stone would be about one-half the cost of receiving and cutting.

Int. Considering that you have allowed the contractors $3.65 per cubic yard as the average for the preparation of stone ready for laying, what proportionate amount would it be fair to allow them for taking the stone from the yard and laying them in the completed masonry?

Ans. I should think about $2.50 or $2.75 per cubic yard.

Int. What quantity of stone was there in the yard unused at the time the Government took charge of the works, October 8th?

Ans. There was about 2,700 or 2,800 cubic yards.

Int. Was all that stone prepared ready for laying?

Ans. No sir, it was not.

Int. How much was there of that quantity that needed cutting, and was marked by the inspector for cutting?

Ans. There is no record of that, to my knowledge, and I cannot say.

Int. As you took the work from the contractors in an unfinished state, do you not consider it was your duty, as officer in special charge of the masonry of this bridge, to have ascertained how far the contractors had progressed in laying stone, and also in preparation of stone ready for laying?

(Objected to as immaterial.)

Int. I did take account of the work in a general way, but being in a great hurry to proceed with the work, the season being far advanced, this was not taken as accurately and minutely as it would otherwise have been, especially as I did not see any need of knowing the exact amount of work done, other than what could be obtained from the monthly estimates.

Int. Did you not keep a man employed especially to measure the stone from the cars and the stone as cut by the contractors?

Ans. I did. But he received certain instructions which had no reference to what might be needed in this testimony, and some of the information which is desired was not recorded, because there was no need of it during the progress of the work.

Int. Do you mean that you have taken the work from the contractors, and are not able, from the records you have, to tell the amount of stone prepared ready for laying by them and left on hand, so that they may be given credit for the amount of such work done by them?

Ans. In taking possession of the work, we informed ourselves of the exact amount of work done by the contractors, though that was not at all necessary according to our view of the case, as the work was to be finished at the expense of the contractors, and they were to be paid the stipulated prices per yard for the finished work. When the work was finished, it simply remained to multiply the number of the cubic yards in the entire work by the prices per yard, and to subtract from the product the amount that had already been paid to the contractors. On their account, the exact state of the work at any time previous to its completion was information of which we had no need, as far as final settlements were concerned.

Int. The contract stipulates that "the whole work to be completed prior to 1st December next, provided that the stone shall be delivered at the rate of 2,000 cubic yards per month, and in case of any failure on the part of the United States to deliver this amount of stone, then the work to be completed as soon after the first day of December next as practicable." Was there any failure on the part of the United States to deliver this amount of stone in the year 1869?

Ans. This amount of stone was not delivered during the months of 1869, but it was because the contractors did not desire it.

Int. Did you order that amount of stone from the contractors for stone, during the year 1869?

Ans. No, sir; I never gave any order about the quantity of stone to be delivered in any month, being contented with keeping the contractors, Harvey & Livesey, supplied.

Int. Was there any failure on the part of the United States to obtain the requisite quantity of stone for the construction of the piers and abutments of this bridge before the first day of December, 1869?

Ans. The word "failure" does not convey the proper meaning of the circumstances; in this case the United States did not furnish 2,000 cubic yards per month.

Int. What is the meaning of the words "in case of any failure on the part of the United States to deliver this amount of stone, then the work to be completed as soon after the first day of December next as practicable?"

(Objected to as incompetent.)

Ans. According to my understanding of the meaning of that clause, it is, that if the United States does not deliver 2,000 yards of stone per month, then Harvey & Livesey are released from their engagement to finish the work by the first of December, A. D. 1869 but the remainder of the clause conveys the meaning; that Harvey & Livesey must finish the work as soon after the first day of December, 1869, as practicable, without any regard to the amount of stone that may be delivered monthly.

Int. Has the requisite amount of stone to complete the masonry of this bridge been furnished by the United States up to this present date?

Ans. It has not.

Int. How much more will be required?

Ans. I think about 800 yards, according to my opinion.

Adjourned, and took deposition of Thomas J. Robenson, and now resume the taking of the deposition of said witness.

Int. Please give me the amount of masonry required to build number five pier, and to finish the Iowa land abutment, and the Island land abutment.

Ans. The masonry for—

Pier number five, about	900	cubic yards.
Iowa land abutment, about	328,9.10	" "
Island land abutment, about	20	" "
Total.....	1248,9.10	

Int. Please deduct from that amount the number of cubic yards of stone now on hand, unused, estimated at 275 yards.

Ans. It will leave 973,9.10 yards.

Int. Then do I understand you that 973,9.10 yards more stone will be required to finish the masonry of this bridge?

Ans. No, sir; if you do understand it so, it is not my understanding. There is required about 1248,9.10 yards of masonry to finish the work; this will require about seven-eighths of that quantity of

stone, that is, about 1092,8.10 yards of stone, deducting therefrom 250 or 300 yards, there remains 792,8.10 yards or 842,8.10 yards more stone.

Int. Do the words in the contract, "the work to be completed as soon after the first December next as practicable," mean as soon after as practicable after the required quantity of stone necessary to complete the masonry had been furnished the contractors?

Ans. I don't think it has any reference to the amount of stone that shall be delivered, to keep the work in progress.

Int. Was it practicable for the contractors to finish their contract with the stone you had supplied them up to the time you took possession of the works?

Ans. It was not.

Int. The contract states, "payments at the rate of $13 per cubic yard for all masonry of the draw-pier, and at the rate of $11 per cubic yard for all other masonry." Does that mean $11 per cubic yard for all masonry connected with the piers and abutments of this bridge, except the draw-pier?

(Objected to as incompetent.)

Ans. It means the masonry in the piers and abutments other than the draw-pier.

Int. How many classes of masonry are there?

(Objected to as immaterial.)

Ans. Five, I believe.

Int. What kind of masonry is that which adjoins the wing-walls of the Iowa shore abutment to keep up the approaches to the wagon bridge?

Ans. There is no masonry other than the abutment itself.

Int. Did you ever hear of any masonry called "rip-rap masonry?"

(Objected to as immaterial.)

Ans. I never did.

Int. Did you ever hear of any masonry called "dry slope wall masonry," or "dry masonry?"

Ans. I never did.

Int. Can you tell me how many yards of stone there is in the building adjoining the wing-walls of the Iowa shore abutment?

Ans. I cannot give it; I have no record of it.

Int. Give me an approximate number of yards of this work?

Ans. 397 cubic yards.

Int. Did you request the contractors to excavate the rock bed of the river? Is the depth from four to eight feet in the rock in which to build the foundation of the island shore abutment?

Ans. I requested them to excavate to the depth of four feet below low water. They excavated one foot deeper.

Int. Did you, on or about the 17th of June, 1871, pay the contractors the sum of $1,883 for such excavations as not being included in their contract?

Ans. I did.

Int. Did you request the contractors, in the month of August or

September, 1869, to dig the foundations of the Iowa land abutment about eleven feet deep, and the island land abutment about four feet deep?

Ans. I don't remember the depths, but I directed them to place these abutments on solid rock foundations.

Int. Do you consider such work extra work, not included in the contract?

Ans. I do not, according to the terms of the contract.

Int. Please give me the dates of the locations of the several piers and abutments?

Ans. They were located sometime in the month of May, 1870, that is, most of them; the others were located in the latter part of the summer of 1869.

Int. Were the land abutments located in May, 1870, if not, when?

Ans. The location of them was determined at that time, but it was not decided to build them until September, A. D. 1870.

Int. Give me the dates when the plans of the several piers and abutments were furnished the contractors?

Ans. I cannot give the dates. The contractors were directed to call for them whenever they wanted them.

Int. Was that direction to the contractors in writing; if not, by whom, and to whom, was it made?

Ans. It was not in writing; it was not deemed necessary to put it in writing. It was given to one of the contractors, I think Mr. Livesey, by me; and I believe, although I am not certain, by Mr. Weston.

Int. Please give me an account, so far as your records show, of the amount and value of work done by the contractors, and the amount paid to them on account of such work?

Ans. I produce the account as taken from the estimates upon which Messrs. Harvey & Livesey were paid, and request the same to be attached to this my deposition, and marked "Exhibit O."

Int. Look at the copy of the proposal now shown to you, dated May 25th, 1869, and marked "Exhibit L," and attached to this your deposition, and tell me if that is a copy of the bid made by Harvey & Livesey for this work?

Ans. It is.

Int. Look at the copy of the proposal now shown to you, dated May 25th, 1869, and marked "Exhibit M," and attached to this your deposition, and tell me if that is a copy of the bid made by Messrs. Reynolds, Saulpaugh & Co., for the construction of the masonry of this bridge?

Ans. It is, to the best of my knowledge.

Int. Were you present at an interview on the 6th of October, A. D. 1870, between Colonel Macomb and the contractors, upon the subject of the taking possession of the works?

Ans. I was.

Int. Did Colonel Macomb ask you how you were going to obtain

stone for the completion of the masonry if the canal were closed, at that conversation?

Ans. I do not remember of his asking me that question, but I do remember of informing him either at that time or some other time, of the manner in which we could obtain stone.

Int. What did you inform him?

Ans. I informed him that we could obtain them by rail, if necessary.

Int. Did you give him to understand that if you had charge of the works and could obtain the necessary stone, that you could complete the masonry that season?

Ans. I did not.

Int. Did you have any conversation with him upon the subject of completing the masonry that season?

Ans. I did. The purport of such conversation was that the contractors were not progressing with the work, and had not been, as rapidly as they should; that I was very well satisfied that the work could and ought to progress more rapidly.

Int. Did the contractors, at their interview with Colonel Macomb, and at which you were present, offer to leave all the questions in dispute between them and Colonel Macomb, in reference to their progress of the work, to the decision of General Rodman, who had made the contract with them?

(Objected to as incompetent.)

Ans. I believe they did.

Int. Did the contractors likewise offer to Colonel Macomb to leave all questions in dispute to the decision of three disinterested practical men, to be named by the parties?

(Objected to as incompetent.)

Ans. I do not remember their making such an offer.

Int. Do you recollect an offer to the contractors, made at that time, that they should build and finish the masonry of piers number two and four and the upper rest, and they, the contractors, having had a letter that day from the quarrymen saying that they would endeavor to furnish the stone, and that Colonel Macomb should build piers number three and five, and that it could then be ascertained whether the contractors were tardy in the prosecution of the work, or not?

(Objected to as incompetent.)

Ans. I do remember some offer of that kind, which was declined.

Int. Please describe the amount of work you did after taking possession from the contractors, in masonry?

Ans. We built 3,079 yards about.

Int. How much of that stone had been prepared ready for laying by the contractors, including the quantity required for backing?

Ans. There was between 1,100 and 1,200 cubic yards dressed, which would require about the same amount for backing in the general work.

Int. Did you employ stone-cutters to alter stone that had been already cut by the contractors, so as to make it suitable to work up the stone that was on the ground?

Ans. I did employ stone-cutters to alter a portion of the stone that had been cut improperly by the contractors, and also to change a great many of the stone which were not cut according to direction.

Int. Explain to me what you mean by stone that had been cut improperly by the contractors?

Ans. I mean some stone that they had cut with a straight face, that is, without batter.

Int. Were these stone cut under the superintendence of General Rodman, and before you had charge of the works?

Ans. Most of them were cut under General Rodman's superintendence, but, as I found upon inquiry, without his direction.

Int. Did the contractors cut any square stone after you furnished them with bevels?

Ans. I cannot say positively, but I think they did cut a few.

Int. Would the stone, so altered by you, have been suitable for the base of number five pier two feet below low water, without any alteration being made to them?

Ans. Some of them would.

Int. Then as you had to build number five pier, why did you alter them?

Ans. Because there are still enough left for that work, as the bottom was supposed to be.

Int. Did you keep a separate account of the number of men employed in so altering the stone which had been cut by the contractors, and the cost of such labor?

Ans. I did not.

Int. Do you think that the contractors should be propperly charged with the cost of such altering stone?

Ans. I do, because they did not cut them according to the directions given them; they cut more of that kind of work than was called for, and would have been compelled to alter some of it themselves if they had continued with the work.

Int. Was not the base of the piers designed by Genl. Rodman larger than the base of the piers under Genl. Warren's plans?

Ans. I believe they were.

Int. Had all the stone necessary to complete the masonry been on the ground would it have been requisite to alter any of these stone, and could they not have been worked into better advantage and without alteration?

Ans. It would, I cannot say how many; and they would not have worked into better advantage without alteration, that is, with the depth at the site of number five, as it was understood to be at that time.

Int. Did you have cut some of these stone for the starting of the piers?

Ans. I don't remember, how they were changed, it is very probable that some of them were cut for starling stone.

Int. Would it have been necessary to have changed these stone into starlings, if the contractors for stone had furnished the proper stone for starlings so ordered by you?

Ans. It would not heve been necessary, but it made but little difference what these stone were changed to.

Int. Please describe to me the work you did in constructing and building coffer-dams since you took possession of the works.

Ans. We completed the inside dam commenced by the contractors in coffer-dam number two; built the coffer-dam number three, with its protections complete; we built the inside dam of coffer-dam number four; and built the coffer-dam number five; and raised the protecting cribs above water; and we completed the coffer-dam for the upper starling of the draw pier, about one-third of which had been built by the contractors.

Int. Did the contractors know of the extra depth in dams number two and four to the rock bed of the river, at the time the coffer-dams were built?

Ans. They did not, the extra depth at at number four was very little.

Int. Did you lay any masonry in pier number five?

Ans. We did not; for the reason that there was a bed of boulders and gravel some 8 feet in thickness, the existence of which was not known at the time of constructing the dam, and which, in that depth of water, made it an impossibility to reach the rock bed of the river with the dam that was built before the running ice put a stop to further operation.

Int. Did this coffer-dam of number five pier burst in; and, if so, how many times?

Ans. The inside planking of the wall on one side broke in on one occasion; on a second occasion one plank broke, the dam filling on both occasions. We pumped the dam out and got to what was supposed to be the bottom, having found that the rock bed was still some 8 feet below this, and from 23 to 24 feet below the surface of the water. The season being virtually at an end, it was deemed proper to abandon the work for the time.

Int. Is that dam at present an entire failure?

Ans. It is not, but the risk and cost of attempting to use it will probably make it necessary to replace the dam.

Int. Did you keep a separate account of the work done in attempting to complete the work of building this coffer-dam?

Ans. I did not.

Int. From your experience in conducting these works since the Government took charge, which is, in your opinion, the most difficult and expensive part of the work: the construction and building the coffer-dams and protection and all the work incident thereto to make them ready to receive the masonry, or the work of preparing and setting the masonry?

(Objected to as immaterial.)

Ans. The former, undoubtedly.

Int. Was the preparing by the contractors of 45 cubic yards of stone for concrete, the preparation of stone ready for laying?

Ans. It was a portion of the preparation. Concrete, of which this stone is a part, is formed by mixing broken stone with a mortar; in that state it is ready for laying.

Int. Was any other stone ready for laying without mortar?

Ans. It was.

Int. Has a contract or contracts been entered into for the iron-work on superstructure of this bridge?

(Objected to as immaterial.)

Ans. A contract has been entered into for that portion of it which can be paid for by the money now appropriated.

Int. How much of the iron-work will that comprise?

(Objected to as immaterial.)

Ans. The draw span and two others, I believe.

Ins. Within what time is that iron work to be delivered under the contract, and when do the contractors commence delivery?

(Objected to as Immaterial.)

Ans. I have nothing to do with that portion of the work, and do not know. My impression is, that the contractors intended to commence delivering early in January, of this year.

Int. At the end of the year 1869, was not the cut stone which had been cut by the contractors piled underneath the traveler as high as they could be, and also scattered along under the rough stone at the upper end of the traveler, and was not the greater portion of the stone lying all around the yard cut that was not marked by the inspector as unfit for cutting?

(Objected to as leading and immaterial.)

Ans. A great deal of the stone that was fit for cutting had been cut, but not all of it. The stone was piled up in the traveler frame to a considerable height, and some cut stone was under the rough stone at the upper end of the traveler in a manner which I thought was very inconvenient to the contractors.

Int. Did you ever complain to the contractors, in writing, of any delay on their part of the progress in these works?

Ans. I don't think I ever did, because I saw them almost every day.

Int. Look at the paper writing marked "Exhibit N," now shown to you, and attached to this your deposition, and tell me if that is a correct extract from a certified copy of the contract entered into by Col. J. N. Macomb, on behalf of the United States with Case & Co., for the improvement of the Rock Island Rapids?

(Objected to as incompetent and immaterial.)

Ans. It is, to the best of my knowledge.

Adjourned until 9 o'clock, a. m., February 17, 1871.

And now, at 9 o'clock, a. m., February the 17th, 1871, I resumed the taking of the deposition of said witness, Amos Stickney.

Int. Had all the work done by the contractors up to the time of the Government taking possession been approved by you?

Ans. No, sir; the masonry laid, I believe, had all been approved, but the manner of dressing some of the stone had not been approved. Mr. Harvey requested me upon one or two occasions, upon inspecting the stone dressed in the yard, to postpone the inspection until the stone was brought to the piers to be laid, and then, if there was any thing wrong, it would be corrected.

Int. Have you paid for the dressing of the stone referred to?

Ans. We have.

Being cross-examined by J. B. Leak, for the Government, witness says:

Int. At the time you directed, by letter dated July 22, 1869, addressed to Harvey & Livesey, that they should stop all work under their contract, did you direct, verbally or otherwise, that all preparatory work, such as cutting stone or preparing it to be thereafter laid, should also be stopped?

Ans. I simply directed that all work should be stopped, supposing that they would, under that order, stop all work which was included in their contract, which would include the cutting of stone, but did not intend or suppose they would stop their own preparations for executing the work.

Int. Did your direction to the contractors for stone not to stop the delivery, cause any delay to these claimants in the prosecution of the work, for want of stone to work upon or with, in addition to the delay which was actually caused by your direction to the contractors, dated July 22, 1869?

Ans. They were not delayed.

Int. At the time they resumed work, did they have all the stone which they could possibly use?

Ans. They had more stone than they could use during that season.

Int. In what were the officers in charge of this bridge-work on behalf of the United States engaged during the time of the suspension from July 22, 1869, to August 23, 1869?

Ans. They were engaged in making a complete survey of the river at the site of the bridge, in obtaining information concerning other bridges on this river, and in studying upon and perfecting plans of this bridge.

Int. Where were their headquarters during this time?

Ans. The office of General Warren was in Davenport, Iowa; that is, the principal office, but a temporary office was in the cabin of a quarter-boat lying at the island near the site of the bridge; here was where the officers spent most of their time, and here is where the map of the river was being made. Some of the assistants lived on the boat.

Int. Where were the contractors during the time of this suspension, for the most part?

Ans. I do not know where they stayed, but they, one or the other of them, were in the office from time to time, especially during the latter part of the time.

Int. Was anything said by you or other officers in charge of this work during this time which conveyed to the contractors a doubt as to whether they were to go on with the work as soon as you were ready, or was anything said by them, or either of them, which led you to believe that they had themselves any doubt as to whether they were to go on with the work?

Ans. I do not remember of anything having ever been said by either of the parties intimating in any way that they, Harvey & Livesey, were not to go on with the work.

Int. Did they, by their conduct, such as inquiries as to the progress of your preliminary surveys and otherwise, act as if they were to proceed as soon as you were ready to have them do so?

Ans. They did.

Int. You have stated that you could not swear that you did furnish the first plan to the contractors earlier than September 4, 1869, and yet you addressed a letter dated August 23, 1869, directing them to resume work. State fully why the contractors did not have the first plan prior to September 4, 1869.

Ans. The most of the work of dressing the stone consisted simply of pitching off the upper bed of the stone so that there should be a batter of one-half inch to the foot and dressing the beds and joints on the face. This work requires no plans, and the contractors were informed how this was to be done. The building of the coffer-dam for the Iowa abutment and making all necessary preparations for laying masonry, would require some time; the only preparatory work about that abutment which required any patterns or plans was the circular corners. The plan of the abutment itself was not needed until the coffer-dam was built, and as there appeared to be no special hurry for it, either in my own mind or in the manifestations of the contractors, it was not given immediately upon announcing that we were ready for them to go to work.

Int. State whether, prior to the time that the first plan was actually given, the contractors had asked you for such plan or made any complaint that said first plan had not been given.

Ans. I do not remember of their ever asking for the plan or making any complaint about it not being given.

Int. Prior to the letter of September 13, 1869, marked Exhibit C, had the contractors said anything to you, or within your knowledge to any other officer, in relation to your building the coffer-dam, &c.? If so, state what they said.

Ans. A few days previous to this letter, three or four days, I think, though I am not positive as to the time, in conversing with the contractors about the work, they made some allusion to the effect that the United States ought to pump out the water and prepare the beds

for the masonry. Afterwards, either during that conversation or a succeeding one, they or one of them, stated that they thought that the Government should build the dams. I disagreed to this position assumed by the contractors. There might have been two or three conversations about it, but all to the same effect.

Int. Was this conversation prior or subsequent to the giving of the first plan for the Iowa shore abutment?

Ans. I cannot say positively. I do not remember.

Int. Prior to the 13th day of September, 1869, the date of that letter marked "Exhibit C," had the contractors ever made any formal demand that the United States should build the coffer-dam, or had they ever notified the officers that they, the contractors, were ready to have the coffer-dams built by the officers in charge of the work?

Ans. I do not know of their ever demanding or requesting the United States to put in the dam previous to the letter of September 13, 1869; the little talk we had about it, the contractors said the United States ought to do it, which at that time I understood to be simply an expression of their opinion.

Int. Previous to September 13, 1869, had the contractors made any preparation, by obtaining machinery, providing material, or otherwise, for either building, filling, or pumping coffer-dams? State fully all you know with reference thereto.

Ans. They had brought to the island previous to my coming here, the 21st of July, 1869, a steam engine, on a flat boat, with the proper rigging for running pumps. They made afterwards, and previous to the 13th of September, a dredging machine, which they attached to this boat and connected with the steam engine, for the purpose of procuring filling for the walls of the coffer dams; they had on the ground, previous to this 13th of September, material for coffer dams, considerable of which had been prepared to put in the dam.

Int. Was that machinery, engine, and pump afterwards used for any other purpose than that required, in some connection with the coffer dams?

Ans. I do not think it was.

Int. You have stated that the notification made by the contractors to General Warren was dated and received September 15, 1869, in which they notified the General "that we shall proceed at once to build said dams, pump the water therefrom, &c." How soon after the receipt of that notice did they actually commence to put any dam into the river?

Ans. That same day, I think.

Int. Could the contractors have proceeded to actually put in a coffer dam on that date if they were unaware of their obligation to build, &c., said dam, and unprepared to do so, prior to September 13, 1869, the date of their notice that they were ready to have the United States put them in?

Ans. They could not if no previous preparation had been made, unless working with an energy such as they never exhibited.

Int. Could it be reasonably done in that time?

Ans. It could not be done, except by using the greatest haste in procuring and collecting material, and in preparing it, such as no man, under the circumstances, would use.

Int. Between the 23d of August and the 15th of September, 1869, what were the contractors engaged in towards the prosecution of the work, and did you urge them to greater expedition or make complaints that they were doing nothing, or anything to that effect? If so, state what.

Ans. They were engaged in receiving stone, in dressing it, and in making preparations for coffer dams. I did urge them to get to work in the river. I do not remember of ever saying that they were doing no work except in reference to work in the river.

Int. Was or was there not, in your judgment, any unnecessary delay in getting to work in the river at that time? If so, state in what that delay consisted.

Ans. I thought there was an unwarrantable delay in commencing dam for the Iowa shore abutment. This dam might have been commenced if the contractors had prepared their material and had their preparations made, which should have been the case, by the 23d of August, 1869.

Int. Were the contractors, during the season of 1869, at any time prepared to commence any other work than that at the Iowa shore abutment, after having commenced that?

Ans. They were not until so late in the fall that they could not carry on other work.

Int. Were they, at any time during the season of 1860, prepared with necessary machinery and otherwise to carry on in the river more than one piece of work at the same time?

Ans. They could have carried on two pieces of work after getting the first one above the surface of the water, so that their pumping engine could be spared for a second dam, but they did not get so far until it was too late in the season to commence a second piece.

Int. Were the contractors then, during the season of 1869, prepared for, or did they ask for, or were they in any way hindered or delayed by not having any other plans than those that had already been given to them of the Iowa shore abutment?

Ans. No, excepting plans for some of the stone of one pier which they received, but they were not delayed or hindered in any manner.

Int. You have been asked a number of questions in your examination in chief in relation to the general plan of the work, when it was definitely decided upon, &c. State now, generally, what delay there was in definitely fixing the plans of the bridge, and why you could not or did not make such definite plan before the contractors commenced to build the masonry? State fully what explanation you have to make.

Ans. After the survey, in the summer of 1869, had developed the peculiarities and characteristics of the river at the site of the bridge, the general plan of the river piers and their location was adopted, the location of the draw-pier was such as to make one of the openings of the draw next to the island shore; this feature was earnestly recommended and requested to be adopted by navigators of the river, in order that they might be able to pass the bridge with their steamboats at all times and in any kind of weather. General Rodman, the commandant of the Rock Island arsenal, seriously objected, for reasons of his own, to this arrangement, and the matter was not decided in Washington until some time in the spring of 1870, when the location of the pier, as previously determined, was approved. The land abutments, which are to be the sustaining wall of the railroad embankments and the support of the short railroad span of the bridge, were not decided upon; first, because there was a question as to whether it was the duty of the United States to build them; and, secondly, it was undecided whether it would not be better to substitute iron columns in place of masonry. These abutments had not been decided upon up to the early part of September, 1870, when the contractors, having given up work in the river, begged to be allowed to build these abutments. I recommended to Colonel Macomb that we should take the responsibility of building them in order that we might aid the contractors by giving them this work during the suspension of their river work, and keep their men together.

Int. In what you have said in relation to plans not being definitely decided upon, you had reference to proper location of the draw pier and of the land abutments. Was the other masonry to be done in the river so definitely located, and the plans so definitely decided upon, that the contractors could have worked upon them, and the plans furnished whenever they were ready to do so, either in the season of 1869 or 1870?

Ans. They were. The position of some of the piers was changed after the first plan, because an opportunity was offered for doing it by reason of their not having been commenced, and after considerations suggested the change.

Int. Were the contractors, at any time, hindered and delayed in the prosecution of this work, by reason of the failure or neglect of the engineers to show them proper location of any pier after they had stated that they were ready to commence work upon such a pier?

Ans. Never, to my knowledge.

Int. State whether or not, in your judgment, the contractors used proper exertions to protect their coffer-dams, either from being injured, or washed away by the various rises in the river during which they were so injured or washed away; if not, state fully in what respect they did not either properly prepare or protect their dams?

Ans. They did not. The coffer-dams for the upper starling of the

draw-pier was entirely swept away. This resulted from sheer carelessness or neglect to arrange the protections in such manner as to keep the current of the river from it. The coffer-dam for the Iowa shore abutment was very slightly built, but even as it was, it might easily have been built up and braced so that the rise in the river would not have flooded the dam and caused a delay and total suspension of river work of one month in the fall of 1869. The protection to the coffer-dam of pier No. 1 was made in such a manner that it permitted a portion or a lumber raft to ride entirely over it and land on the dam, causing a few days' delay on this work. The first coffer-dam commenced for pier number 4, after having about half the wood-work finished, or nearly half, was all taken out, because the filling for the walls was not furnished in quantities and in time to keep the wood-work in place. The coffer-dam started by the contractors for pier number 5, was abandoned after being half built, having broken down in its construction. The efforts to keep the dam number 2 above water during the rise of September, 1870, was feeble and soon given up. The dam of Island shore abutment, after having about one-third of the timber-work in, was taken out, because the filling of the walls was not furnished fast enough to keep the timber in place.

Int. Did you, at any time, give any direction with relation to the manner of construction of the coffer-dams built by contractors? Were you advised or consulted with reference to the manner in which they were built, or did any other officer of the Government, to your knowledge, so direct, or was he so advised and consulted with?

Ans. I did not give any such direction, nor was my opinion asked, nor that of any other officer, so far as I know.

Int. Did you, at any time, suggest to these contractors that their dams were being insufficiently made or protected; if so, what did they say?

Ans. I have suggested that their dams should be made stronger and better protected. My suggestions seemed to have no weight whatever with them.

Int. Which part of the masonry to be done was the most difficult of constructions in the river, that which had been done by the contractor before the Government took possession, or that which then remained to be done, and give reasons for your answer, whatever they may be?

Ans. That portion that remained to be done when the Government took possession of the work was much more difficult than that which had been done by the contractors, on account, first, of the greater depth of water; secondly, because there was much more of the hammer-dressed work to be set, which required greater nicety and precision in setting.

Int. Was there not prior to the time the Government took possession, and prior to the rise of September, 1870, such a stage of water in the river that masonry work could have been built advantageously

in the piers situated in the deeper water; if so, why was not the masonry work done at such places, at such time; and why was the masonry first built where the water was comparatively shallow? State fully all your knowledge about that subject.

Ans. During the summer of 1870, the water was at quite a low stage, and I desired the contractors to commence the work on pier number 5 and the upper starling of the draw-pier, which were in deeper water than the other pieces of masonry at this time when the water was low, but they stated that it would be more advantageous to them to build pier number 1 first. Desiring to accommodate them as far as possible, I allowed them to commence that pier first.

Int. Was there a sufficient time during which the water remained low, that that work could have been advantageously done if they had chosen to have done it at that time?

Ans. There was.

Int. What reason did they give for it being more advantageous to them to build the shallow work first?

Ans. They said that they would be less interfered with by rafts.

Int. You have been asked with relation to the stone work done adjoining the wings of the Iowa shore abutment as to whether you would call it masonry, &c. What was that work, by whom was it done, and what interest, if any, have these claimants in said work?

Ans. The work referred to is a dry wall of stone laid up for the purpose of protecting the slopes of the earth approach to the bridge; it was done entirely by the Government, and the contractors are not interested in it in any way whatever.

Int. You have said in your examination-in-chief that it was not practicable for the contractors to finish their contract with the stone you had supplied them up to the time you took possession of the work. State fully what you mean by that? Could you not have supplied the stone requisite for them to finish with if they had been in condition to finish, within any certain time?

Ans. I mean there was not sufficient stone on the ground at the time Government took possession of the work to entirely complete the job; the Government could easily have furnished the necessary amount of stone, and would have done so if there had been any necessity or demand for it.

Int. State how many times the contractors for furnishing stone were directed to stop the delivery of stone to these works, and state also the occasion for so doing, and at whose instance it was done at each time it was done?

Ans. The delivery was stopped first, I believe, before I came here, at the request of Harvey & Livesey; this I don't know personally, but I have been so informed. On the 22d of July, 1869, I directed the stoppage at the same time I directed all the work to stop. Sometime in the fore part of October, A. D. 1869, I again directed it to stop, being informed by Harvey & Livesey that it would be an accommodation to them, or words to that effect. In August, 1870, I think, I again directed it to stop, it being considered in a consul-

tation between Messrs. Harvey & Livesey, Singer & Talcot and myself, that we had a sufficient quantity for our work.

Int. Were any of these stoppages, not including the one of 22d of July in my question, made against the wish of the contractors, or in accordance with the wish of the officers of the Government, except as they thought it might be desired by the contractors?

Ans. They were not.

Int. Did either of the claimants, prior to the time the United States took possession, October 8, A. D. 1870, ever make any complaint to you or any other officer in charge of the work, to your knowledge, that they had been hindered, delayed, or damaged by reason of their not having sufficient stone of the various kinds to go on with the work as rapidly as they would otherwise have done in case they had had such stone?

Ans. Never, to my knowledge; to myself or any body else, previous to October 6, when they were first informed that the Government contemplated taking the work; that time the contractors made several complaints, of which, I believe, the want of sufficient stone was one.

Int. You have said in your examination-in-chief that you never heard of rip-rap masonry, or dry slope wall masonry, or dry masonry. Do you mean that you have never heard of rip-rap stone work, &c.; if not, state what you do mean?

Ans. I have heard of dry-wall and rip-rap stone work. That is not masonry according to my notion of masonry. Masonry involves the idea of mortar or some kindred substance to bind, and worked together.

Int. In what condition did the contractors leave their work, their machinery, boats, staging, &c., at the close of their work in season of 1869?

Ans. Their traveler frame over the Iowa shore abutment and at the shore on the island, was left entirely exposed to the action of the ice, although warned by myself and others that it was unsafe, and much of it was carried out by the moving ice; their boats were placed at the lower end of the city of Rock Island, in a place that was not at all secure, and they were damaged considerably by the moving ice.

Int. Was this damage in any manner attributable to any hindrance or delay that they had heretofore met with by reason of the action of the officers of the Government, or was it attributable to their own want of foresight and prudence?

Ans. It was entirely attributable to their own want of foresight and prudence.

Int. Did this occasion any delay in the prosecution of the work in season of 1870; if so, how long?

Ans. I think it caused a delay in time required to repair the boats; as to how long, I cannot say.

Int. State whether or not, in your opinion, during the season of 1869 ane 1870, these contractors or claimants did prosecute the work

under this contract as expeditiously and efficiently as they ought to have done and reasonably might have done; if not, state what reasons you have for so thinking? State fully without further questioning.

Ans. I do not think that they carried the work on as expeditiously as they should; there was about three weeks' delay in commencing their river work in the fall of 1869; there was a month lost in allowing the coffer-dam of the Iowa shore abutment to be flooded; there was a delay in commencing the work in the spring of 1870; there was a delay in building the dam for the island shore abutment; there was a delay in commencing the dam for pivot masonry of the draw pier; there was a delay in pumping the dam for the lower starling of the draw pier; there was a delay in pumping the dam for pier number one; there was a delay caused by the necessity of taking up first dam commenced for pier number four; there was a delay caused by the necessity of abandoning the dam for pier number five, commenced by the contractors; there was a delay caused by the break of the first dam of the upper starling of the draw pier; there was a serious delay caused by the sweeping away of that dam; there was a delay caused by the break of the dam for the pivot masonry; the work was delayed generally by the want of a sufficiency of machinery.

Int. At the time Col. Macomb received instructions to take steps to expedite the work, or words to that effect, do you know of any means you could have adopted for that purpose consistent with retaining the work in the hands of the contractors?

Ans. I do not know of any suitable and efficient measures which were called for in instructions to Col. Macomb.

Int. Did the claimants suffer any loss of machinery, vessels, and tools, caused by their ejectment from the work, quoting their language, which they would not suffer in case they had completed the work on the same date, and been left in possession of their machinery, vessels, and tools, in the same manner as they were on this occasion?

Ans. No, sir. I am quite sure they did not suffer any loss on that account.

Int. Should not all prospective loss from being left in possession of machinery, &c., at the completion of work, be taken into account and covered by the price for which the masonry is originally contracted for?

Ans. Certainly.

Int. Was any damage whatever done to their machinery, tools, &c., by reason of the change?

Ans. None that I know of.

Int. Have you any hope, expectation, or promise of reward, compensation, or benefit of any kind from these claimants in case they are successful in this suit?

Ans. None whatever.

Re-examination-in-chief by F. H. Harvey for claimants:

Int. When you took charge of the works from the contractors on October 8th, 1870, did you at once employ and continue in your employment most of the men who had been in the employ of the contractors?

Ans. I did employ some of them. I do not know whether it was most of them.

Int. Did you, without any delay, engage other men in addition, and increase the staff of men on the works to nearly or quite double the number of men Harvey & Livesey employed?

Ans. Not immediately, but soon after—within less than a week.

Int. Was it not less than three days?

Ans. I do not know.

Int. How soon after you took possession of the works was it before you laid any masonry in pier number two—the first pier you commenced?

Ans. It was some time about the 20th or 21st of October.

Int. You have said that the boats of the contractors were, in the fall of 1869, placed by them in a place that was not at all secure. Were not the Rock Island ferry steamboat and the steamer Jenny Brown, laid up at the same place?

Ans. They were.

Int. How much per yard did you pay for setting the 397 yards of dry wall work at the Iowa shore abutment?

(Objected to as immaterial.)

Ans. I do not know, it was done by days work.

Int. Did you commence building this work once and it failed, and you had to rebuild it?

Ans. No sir. It did not fail. I did rebuild because the plans of the approach were slightly changed which required the slope walls to be placed in a different position.

Int. Did the action of the frost, in the winter of 1969, remove the dirt filling behind so that the wall was damaged thereby?

Ans. The earth filling behind was slightly washed by high water, in the spring of 1870, which went over top of wall; the damage done was trifling.

Second general interrogatory by Commissioner:

Do you know of any other matter relative to claim in question, if you do, state it?

Ans. There may be other matter, but none I think of at present.

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

Subscribed and sworn to before me, this 17th day of February, A. D., 1871.

EDWARD D. SWEENEY,
U. S. Com.

(EXHIBIT "A.")

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

ROCK ISLAND, ILL., *July 22d, 1869.*

MESSRS. HARVEY & LIVESEY,

SIRS: You will at once stop all work under your contract for constructing the piers of the bridge connecting Rock Island with the city of Davenport, and not resume the work until you receive further instructions.

By direction of Bvt. Major Genl. G. K. Warren, Major Corps of Engineers.

Very respectfully, your obt. svt.,

AMOS STICKNEY,
Capt. of Engrs. Bvt. Maj. U. S. A.

(EXHIBIT "B.")

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

U. S. ENGINEER'S OFFICE, *Davenport, Ia., Aug. 23d, 1869.*

MESSRS. HARVEY & LIVESEY,

GENTLEMEN: The position of the abutment and first pier of the bridge on the Iowa side are determined and marked, ready for you to commence their construction.

Very respectfully, your obt. svt.,

AMOS STICKNEY,
Capt. Engs. Bvt. Maj. U. S. A.

(EXHIBIT "C.")

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

To BREVET MAJOR GENL. G. K. WARREN,
Major of Engineers United States Army,

SIR: Not waiving any damages the undersigned may have suffered by reason of the delay on the part of the United States, we are now ready to construct the piers and abutments for the new rail and wagon bridge to be built, to connect the island of Rock Island with the city of Davenport, under the contract entered into by the United States on the one part, and the undersigned of the other part, dated the first day of June, one thousand eight hundred and sixty nine; and we hereby request that the United States shall forthwith construct the requisite coffer dams, exhaust the water therefrom, and

prepare the bed for said piers and abutments where necessary for the commencement of said work.

Very respectfully, yours,

HARVEY & LIVESEY.

September 13, 1869.

Received this 13th day of September, A. D. 1869, the original of which this is a copy.

(EXHIBIT "D.")

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

OFFICE OF THE ROCK ISLAND BRIDGE,
ROCK ISLAND, ILL., *September 14, 1869.*

MESSRS. HARVEY & LIVESEY,

GENTS: Your letter of the 13th inst., addressed to Bvt. Maj. Gen. G. K. Warren, was received yesterday, and he has directed me to say that after fully considering the subject of your letter and the contract entered into between yourselves and the United States, we are fully convinced that you, and not the United States, are required by said contract to construct the requisite coffer-dams, pump the water from the same, and prepare the beds for the piers and abutments.

Very respectfully, your obt. svt.

AMOS STICKNEY.
Capt. of Engrs. Bvt. Maj. U. S. A.

(EXHIBIT "E.")

AMOS STICKNEY,
Capt. of Engrs., U. S. A.
To BREV. MAJ. GEN. G. K. WARREN,
Major of Engineers, U. S. Army,

SIR: Whereas the undersigned claim, that under the contract entered into by the United States on the one part, and the undersigned of the other part, dated the first day of June, one thousand eight hundred and sixty-nine, to construct the piers and abutments for the new rail and wagon bridge to be built to connect the island of Rock Island with the city of Davenport, the United States are obliged to build the requsite coffer-dams, pump the water therefrom, and prepare the beds where necessary, for said piers and abutments;

And whereas, on the 13th day of September, A. D., 1869, we made demand in writing on the United States, to build said dams, pump the water therefrom, and prepare said beds;

And whereas, the United States, did then and there, in writing, on the 14th day of Sept., refuse either to build said dams, pump the water therefrom or prepare said beds;

Now, therefore, we do hereby protest against such refusal of the United States to build said dams, pump the water therefrom, and pre-

pare said beds; and do hereby notify the United States that we shall proceed at once to build said dams, pump the water therefrom, and prepare said beds, and shall hold the United States for the payment of the costs and expenses of the same.

Dated this 15th of September, A. D. 1869.

Very respectfully, yours, &c.,

HARVEY & LIVESEY.

Received this 15th day of September, A. D., 1869, the original whereof this is a copy. And in order not to delay the work, I consent to the work going on until the matter can be referred to the U. S. Attorney General; but in this consent it must be considered that nothing is admitted in favor of the claim of the contractors to their interpretation of the contract.

G. K. WARREN,

Major Engineers and Bvt. Major General U. S. A. in charge construction of bridge.

(EXHIBIT "F.")

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

(EXHIBIT "G.")

AMOS STICKNEY,
Capt. of Engrs. U. S. A.

OFFICE OF SUPERINTENDENT OF CONSTRUCTION, ROCK ISLAND BRIDGE,
ROCK ISLAND, ILL., *February 16th, 1870.*

MR. JAMES LIVESEY, *Madison, Wis.*

DEAR SIR: Your letter of 11th inst. has been received, also the first, for which I am very much obliged. The water is very high, being nine feet above low water mark, and the ice has not been very strong any time this winter. We are not yet able to decide on our plans for the masonry definitely, which is very provoking, with the spring so near at hand. Yesterday I went down to look at your boats, and found them as Mr. Negus wrote you. The four lower flats and the dredge, do not seem to be injured, but are shoved up pretty well on the bank; the other flat however, is badly smashed. I think you had better be down here before the ice moves, or all the rest of your traveler frames will go. I hope you will put a large force at work this year, so that we can be sure of finishing the masonry.

Yours, very respectfully,

AMOS STICKNEY,
Capt. Engrs. Bvt. Maj. U. S. A.

(EXHIBIT "H.")

AMOS STICKNEY, *Capt. Engineers U. S. A.:*

(Copy.)

Appropriations for Rock Island Bridge.

The United States for same,

TO HARVEY & LIVESEY, DR.

Abutments of Rock Island Bridge.

1870, September 30th. For extra work in dressing stone for abutments, 1,559 superficial feet, at 75 cents..... $1,169 25

Received at Rock Island, Ill., this 30th day of September, 1870, from J. N. Macomb, Col. Corps of engineers, the sum of eleven hundred and sixty-nine dollars and twenty-five cents, in full payment of the above account. Paid by check No. 57, dated 30th September, 1870, on depository of U. S. at Chicago, Ill., per $1,169.25.

(Signed in duplicate,) HARVEY & LIVESEY.

(EXHIBIT "O.")

EDWARD D SWEENEY, *U. S. Com.* AMOS STICKNEY, *Capt. of Eng. U. S. A.*

This account is taken from the estimate upon which Messrs. Harvey & Livesey were paid

	Stone $13 per yard.	Set, $11 per yard.	Total amts of Stone set.	Dressed Stone set	Stone Dressed.	Stone Received and Handled.
Season of 1869	....	546	546	183	1,700	4,389
May, 1870	....	162	162	50	104	....
June, "	....	818	818	260	204	369
July, "	1,318.5	....	1,318.5	435	386	1,310
August	180	512	692.0	534	303	89
September	58	384	442	92	364	359
October	....	177	177	46	116	25
	1,556.5	2,599	4,155.5	1,650	3,177	6,421

From total amount of stone received and handled take stone set		4,155.5
Stone received and handled not set		2,265.5
From total amount of stone dressed take cut stone set	1,650	
Stone dressed and not set	1,527	
Stone set in draw pier, 1,561¼ yards, at $13		20,234 50
Stone set in other piers, 2,599 yards, at $11		28,589 00
Stone dressed and not set, 1.527 yards, at $4.60		7,024 20
Stone rec'd and handled, not set, 2,265½ at yds. $1.35		3,058 42
Total value of work done by contractors		58,906 12
Retain ten per cent.		5,89 1 61
Amount entitled to		53,015 51

Amount paid to Harvey & Livesey.	
1869,	
Sept. 10	2,500 00
Oct. 7	7,000 00
Nov. 30	5,000 00
1870,	
June 2	3,501 65
July 7	7,527 86
Aug. 9	3,500 00
Aug. 11	10,000 00
Aug. 20	1,867 25
Sept. 12	5,790 97
Oct. 6	5,475 73
Oct. 20	1,897 97
Total amount paid to contractors	$54,061 42

For "Exhibit F" see second page of "Exhibit E."

EDWARD D. SWEENEY,
U. S. Com.

Adjourned the further taking of the within depositions until 9 o'clock, on the 18th day of February, A. D. 1871.

EDWARD D. SWEENEY,
U. S. Com.

[NOTE BY THE CLERK.—Exhibits I. J. K. L. M. & N. are omitted from this record, as per stipulation of counsel for claimants and defendants, filed in the Clerk's Office June 8th, 1878.

JOHN RANDOLPH,
Asst. Clk. Court of Claims.]

Deposition of Wm. P. Butler, for Claimant, taken at Rock Island, on the 18th day of February, 1871.

WILLIAM P. BUTLER being duly sworn, deposes as follows:

First general interrogatory by the Commissioner:

Please to state your name; your age; your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants, or either of them?

Ans. William P. Butler, Second Lieutenant Ordnance Department, U. S. Army, 27 years of age, at Rock Island Arsenal. I have no interest in the claim, and am not related to the claimants or either of them.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. Did General Rodman, in the early part of the year 1869, design plans for a bridge from the island of Rock Island to Davenport?

Ans. He designed plans for the piers and abutments, but their location was not definitely settled.

Int. Was a contract entered into by General Rodman with Messrs. Singer & Talcot in the month of May, 1869, for the supply of the stone for this bridge?

Ans. There was a contract, but I do not remember the date.

Int. Was a contract entered into by General Rodman with Messrs. Harvey & Livesey on the 1st day of June, 1869, to construct the masonry of this bridge?

Ans. I believe there was.

Int. Were you placed in special charge of the masonry of this bridge so designed by general Rodman?

Ans. I was not. Being Post Adjutant, attended to the drawing, and also, under Genl. Rodman's instructions, made the official estimates for the bridge, and did all the engineering that was done while the bridge was under the charge of the Ordnance Department.

Int. Look at the letter dated July 22, 1860, marked "Exhibit

A," and attached to this your deposition, and tell me if that is the letter addressed by General Rodman to Messrs. Harvey & Livesey, the contractors for the masonry, and if such letter bears General Rodman's signature?

Ans. It is such letter, and bears his signature.

Int. Please give me the depth of the river below low water, as indicated by the profile made under the direction of General Rodman?

(Objected to as incompetent.)

Ans. I cannot tell.

Int. Did General Rodman's design for the piers and abutments of this bridge contemplate five small piers, a draw pier, and the Island abutment?

Ans. It did.

Int. Please tell me the number of cubic yards of masonry there would have been in such piers and abutments had General Rodman's designs been carried out?

Ans. For a single track bridge there would have been about 9,557 cubic yards.

Int. Upon what average depth of the river below low water was such calculations made?

Ans. I do not distinctly remember, but I think the calculation was based upon six feet below low water for the five small piers, and eight feet for the draw pier.

Int. In the design of General Rodman would the pivot pier have been located at or near the same part of the bed of the river as pier number five is now located?

Ans. That had not been definitely determined; but in the estimates, the draw pier was supposed to be at the end of the second span from the island shore; and, in that case, the shore pier would have had about the same position as pier number five now has.

Int. Would pier number five, in General Rodman's designs, have been placed at or near the same part of the river as the pivot pier now is placed?

Ans. It would if the pivot pier had been placed in the position of the present pier number five.

Int. Look at the document marked "Exhibit B," and attached to this your deposition, and tell me if that document contains the measurement of the base of the five small piers and the draw piers, according to the designs or plans of General Rodman, and is such document in your hand-writing?

Ans. It does contain such admeasurements, and is in my hand-writing.

Int. Did you furnish the contractors with such document, and if so when?

Ans. I did furnish it to the contractors, that they might determine the amount of material required for their coffer dam, but I do not remember the date.

Int. Please tell me the amount of masonry there would have been

in piers number 1, 2, 3, and 4, if General Rodman's designs had been adopted?

Ans. I do not know without special calculation.

Int. Please tell me the amount of masonry there would have been in pier number five, if General Rodman's design had been adopted, such pier placed where the pivot pier now is, and the depth below low water, as stated by Mr. Weston, the assistant engineer, in his testimony, being at that point 4.50 feet?

(Objected to as incompetent, upon an improper assumption of depth of pier.)

Ans. I do not know without special calculation.

Int. Please tell me the amount of masonry there would have been in the island abutment if General Rodman's plans had been adopted?

(Objected to as incompetent.)

Ans. I do not know without special calculation.

Int. Please tell me the amount of masonry there would have been in the draw pier, if General Rodman's designs had been adopted, such pier being placed where pier number 5, when built, will be placed, and the depth below low water at that point of pier number 5 being 20.50 feet, as stated by Mr. Weston, the assistant engineer, in his testimony?

(Objected to as incompetent.)

Ans. I do not know without special calculation.

Int. How long would it take you to make the special calculations you have referred to?

Ans. Not longer than one day.

Int. Would it take you longer than four hours, if you were not called away to any other duty?

Ans. I think not.

Int. If the further taking of your testimony is adjourned for four hours, will you make such calculations and furnish the information desired?

Ans. I will not, as it is labor I am not called upon to perform, and which any one can do as well as I can.

Int. And do you absolutely refuse to make these calculations, and furnish this information?

Ans. I do, unless I am under obligations to do so.

Cross-examined by J. B. Leak for the Government, witness says:

Int. You have been asked to make a number of calculations in the questions immediately preceding; have you ever made those calculations in the discharge of your official duties or otherwise? Are the results in your possession or on record, where you can obtain them, or have you data from which to make them, except those given in the questions themselves and the piece of paper marked "Exhibit B?"

Ans. I have never made those calculations, nor have they ever been made to my knowledge. I have no data from which to make them except those given in the questions and said "Exhibit B,"

without referring to the drawings of the piers themselves, and those I have not.

Int. Do you know, of your own knowledge, that the data given, except "Exhibit B," are correct?

Ans. I do not.

Int. You have been asked whether or not certain piers in General Rodman's designs for the bridge occupied about or nearly the same position as certain other piers in the bridge now being built. State whether or not all the piers or nearly all of the piers of the present bridge do not stand at some distance further down the river than the piers of General Rodman's bridge? If so, state about what distance.

Ans. The island abutment is built in nearly the same place as determined by General Rodman, but the Iowa abutment is, I think, about thirty feet lower down.

Int. Have you any promise, expectation, or hope of reward, compensation, or benefit of any kind from these claimants, in case they are successful in this suit?

Ans. I have not.

Re-examined in-chief.

Int. Would the change of the Iowa abutment as spoken of in your last answer, make any material difference; and, if so, what difference in the depths of water of the river at the points designed for Gen'l Rodman's bridge or Gen'l Warren's bridge?

Ans. There would be no material difference, so far as I know.

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not think of anything of importance.

W. P. BUTLER,
1st Lieut. Ordnance.

Subscribed and sworn to before me this 18th day of February, A. D. 1871.

EDWARD D. SWEENEY, *U. S. Com.*

(EXHIBIT A.)

ROCK ISLAND ARSENAL, ILL., *July 22d, 1869.*

Messrs. HARVEY & LIVESEY,
Rock Island, Illinois,

GENTLEMEN: The construction of the bridge over the main channel of the Mississippi at this point, has been transferred from the Ordnance Department to the Corps of Engineers, and placed under the charge of Brev. Maj. Genl. G. K. Warren, Major of Engineers.

Any directions you may receive from General Warren or his assistant, Brev. Maj. A. Stickney, should be obeyed accordingly.

Respectfully yours,

T. B. RODMAN,
Lieut. Col. and Brevt. Brig. Genl. U. S. A., Comd'g.

EDWARD D. SWEENEY, *U. S. Com.*

(EXHIBIT B.)

Piers, 74′ 6″ long, 14′ wide, (bottom.)
Draw pier, 449′ long, 56′ wide, (bottom.)

EDWARD D. SWEENEY, *U. S. Com.*

Deposition of Jerman S. Keator for Claimant, taken at Rock Island, Illinois, on the 18th of February, 1871.

JERMAN S. KEATOR, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner:

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants, or either of them?

Ans. My name is Jerman S. Keator; lumber manufacturer; 48 years of age; live at Moline, Illinois, for the last year; no interest in claim, and not related to parties.

Int. How many years have you been in business in Moline?

Ans. Thirteen years.

Int. In your business as a lumber merchant, are you necessarily intimately acquainted with the different stages of water in the Mississippi River?

Ans. Yes sir, I am.

Int. Do you recollect a rise in the river in the fall of 1869; if so, please state what you know about it?

Ans. I know we had, I think it was in the latter part of September or first of October, about that time a heavy rise in the river, so much so that it bursted all the Government coffer-dams at Maline, and swept everything through the slough. This rise lasted something like three weeks.

Int. It has been stated by Major Stickney, in his testimony in this suit, that the contractors did not take proper measures to protect the dam they had built at the Iowa shore abutment from the consequences of this rise, and that through their neglect it overflowed; and he has also stated that it was slightly built. In your judgment,

with such a rise as occurred in the fall of 1869, could measures have been reasonably taken to prevent the overflow of the dam; and if it had been slightly built would it have withstood such a flood as then occurred?

Ans. I don't believe that any ordinary coffer-dam, built without knowledge of such a rise, could have withstood such a rise. Measures could not reasonably have been taken without the knowledge of the rise.

Int. Was it an unusual and unexpected rise for that season of the year?

Ans. It was.

Int. Do you recollect, on any previous occasion within your knowledge, of a similar rise of the river at that season of the year; if so, state when?

Ans. I don't recollect of but two or three in thirteen years; so much of a rise.

Int. Do you recollect the rise in the spring of 1870; if so, state what you know of that rise?

Ans. I know it was the greatest rise I have ever seen since I have been on the Mississippi; so much so that it flooded my mill four feet deep on the engine floor.

Int. Do you remember a rise in the fall of 1870; if so, state what you know of it?

Ans. I know it was a heavy rise; not so much as it was the fall before, still it was a heavy rise for that season of the year.

Int. Have you known the contractors, Messrs. Harvey & Livesey, and had business transactions with them during the year 1870?

Ans. I have.

Int. In the course of your business, have you had occasion to visit the works they were executing of the masonry of the Rock Island bridge; and, if so, how often?

Ans. Not often, but occasionally.

Int. From such visits, and your intimate knowledge of the several stages of water in the river since they have had the works in progress, in your judgment did they use all the energy they possibly could under the difficult circumstances in which they were placed, to prosecute the work to completion?

(Objected to as incompetent.)

Ans. From my knowledge of what I saw and what Mr. Harvey said to me, I think they did. I had heard in the streets that they, the contractors, were not driving the work as fast as they should. I met Mr. Harvey one day, and said to him that I had heard these rumors, and in explanation he said, that since the water had gone down, Major Stickney had not furnished him with the proper material; and he said that was what delayed them.

Being cross-examined by J. B. Leak for the Government, witness says:

Int. You have spoken of the various rises in the river in the fall

of 1869 and the spring and fall of 1870, as being unusually high. Is it usual to have rises in the river at and about the same seasons of the year?

Ans. Not generally so large in the fall. It is usual to have small swells in the river.

Int. Are these high rises, of which you have spoken, longer in duration than the usual rises at the same seasons of the year?

Ans. Yes, they were; they lasted a few days longer.

Int. You have stated, in speaking of the coffer-dam at the Iowa shore abutment, that you don't believe that any ordinary coffer-dam built without the knowledge of such a rise, could have withstood such a rise. Would it make any difference, in your judgment, that such dam was built on the edge of the current in the shallowest water in the river, and one side of the dam was the rocky shore?

Ans. It would make a difference, of course.

Int. You have stated that from the knowledge of what you saw, and from what Mr. Harvey said to you, you think they used all the energy they possibly could under the difficult circumstances in which they were placed, to prosecute the work to completion. State what you know aside from what Mr. Harvey said to you.

Ans. I know that they were driving the work after the spring rise, for two months, I thought, with energy. After that I didn't think the work was being pushed as it ought to have been. I then had this conversation with Mr. Harvey, and in explanation of that he said, that they, the Government, were not furnishing them with the material so that they could go on and finish it up as they wished.

Int. Supposing that there was no deficiency of material furnished to the contractors during the season of 1870, is it your judgment that after the spring rise the work was pushed with such energy as it ought reasonably to have been?

Ans. I think a portion of the time it was. I think if the material was furnished to them, as you state, there was a time when it was not pushed with such energy as it should have been, but that was only a short time.

Int. Have you ever done any work of this kind in river masonry, or had any experience in it practically?

Ans. No, sir.

Int. How frequently, during the season of 1870, were you actually at the work being done in the river?

Ans. I was at the island shore abutment and the island land abutment quite frequently. I was over there to see about lumber.

Int. Were you ever at any of the works in the river on the Iowa shore?

Ans. Not at any of the works in the river.

Int. Have you any expectation, promise, or hope of reward, compensation, or benefit of any kind from these claimants in the event of their being successful in this suit?

Ans. No, sir; I have no interest in any shape.

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. No, sir.

JERMAN S. KEATOR.

Subscribed and sworn to before me this 18th day of February, A. D. 1871.

EDWARD D. SWEENEY, *U. S. Com.*

Deposition of Richard Lloyd, for claimant, taken at Rock Island, Illinois, on the 18th of February, 1871.

RICHARD LLOYD, being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Ans. My name is Richard Lloyd; occupation is general superintendent of mason work under General Rodman; age, 46 years; resided in city of Rock Island, Illinois. I have no interest in said claim. I am not related to them.

Int. What position do you hold in the employ of the Government at Rock Island, and how long have you held that position?

Ans. I am general superintendent of mason work under General Rodman, at the Rock Island arsenal, and the works in progress of construction on the island of Rock Island, and have been so for the last seven years, but not all the time under General Rodman.

Int. Do you recollect that a contract was entered into in the month of June, 1869, by General Rodman with Messrs. Harvey & Livesey, for the construction of the piers and abutments of the bridge then contemplated by General Rodman?

Ans. Yes; I do.

Int. Were you directed by General Rodman to give directions to the contractors as to the receiving, handling, and dressing of stone for this bridge?

Ans. Yes; I was so directed. By handling, I mean unloading.

Int. Did you give contractors instructions for preparing the stone ready for laying in the piers and abutments?

Ans. Yes.

Int. How far was the stone so ordered to be prepared, to come below low water?

Ans. It was ordered to be square from the bottom to within two feet of low-water mark. I mean by square, that there was to be no batter on the face.

Int. Did the contractors cut any stone contrary to your directions?

Ans. No; not that I am aware of.

Int. Would you have been aware of it if they had?

Ans. Yes.

Int. Had you an assistant superintendent of this work during your absence?

Ans. Yes.

Int. If the contractors had cut any stone contrary to directions, and during your absence, would it have been so reported to you by your assistant?

(Objected to as incompetent.)

Ans. It would.

Int. During the time you were so in charge of this work, was there any stoppage in the supply of stone by the contractors for stone; or, to your knowledge, were there any instructions given them to cease the supply?

Ans. There was no stoppage and no instructions given to them, so far as I know.

Int. What condition was the ground in around where the stone was placed, as received at that time?

Ans. If I remember right, the ground was soft. You can work in it in the summer part of the year. It was naturally damp, and had not yet got dry.

Int. Did the stone arrive from the contractors for stone in any considerable quantity at that time?

Ans. Yes, it came in quantities. I do not remember how much.

Int. Had any instructions at that time been given to the contractors to go to work in the river?

Ans. Not that I know.

Int. The stone arriving in quantities, and no instructions having been given to go to work in the river, did the contractors erect a traveler for the purpose of stowing the stone as it was received?

Ans. I know they erected a traveler, and they packed away the stone, but whether they erected it for that purpose or not I don't know.

Int. In your opinion, could the contractors have adopted any better way for stowing the stone than they did by the erection of the traveler, under the circumstances?

(Objected to as incompetent and leading.)

Ans. No.

Int. If the contractors had received instructions to go to work in the river soon after they commenced to receive stone, would the expense incurred of erecting this traveler have been necessary?

(Objected to as incompetent and leading.)

Ans. It would not have been necessary for them to have erected it, as I know of.

Int. Was it a disadvantage or otherwise to the contractors to have to resort to such means to store the stone?

(Objected to as incompetent and leading.)

Ans. Yes, it would be a disadvantage to them.

Int. What, to your judgment, was it worth per yard to store stone,

or pack them away, in this way, and the selecting them out again, as near as you can tell?

(Objected to as incompetent.)

Ans. About one dollar per yard.

Int. It has been proved, in the testimony taken in this suit, that the base of the small piers in General Rodman's plans were 14 feet wide, and the draw pier was 56 feet wide, and that in the plans of the bridge now being built the base of the small piers is reduced to 10 feet wide, and the base of the draw pier is reduced to 38 feet wide, the length being nearly the same. Would such reduction be a disadvantage or otherwise to the contractors who did the work, they not having to find any of the material; and, if so, what disadvantage, in your judgment?

(Objected to as incompetent and leading.)

Ans. It would be a disadvantage, and it would make a difference to the contractors of about one-third, or 33 per cent.

Int. When stone is prepared ready for laying, with a sufficient quantity of packing, what proportion does the value of such preparation bear to the entire expense of the finished masonry in the piers?

(Objected to as incompetent.)

Ans. It would be worth more than two thirds more; or about two-thirds for the cutting more than the setting; that is what I would suppose that it would be worth; about two-thirds more to cut and prepare it than it would be to set it.

Int. Would not the material obtained during the time you had charge have made a first-class job of masonry?

(Objected to as incompetent, leading, and immaterial.)

Ans. Yes.

Int. Look at the plan now shown to you and marked "Exhibit A," and attached to this your deposition, and tell me if such a plan of the band of masonry of starling of piers shows, and is, a practical way, with the material that had been obtained, of proceeding with the work?

(Objected to as incompetent, leading, and immaterial.)

Ans. Not at the time that I was there.

Int. To make such a band as is disclosed by this plan, would it not require to have dimension stones to practically carry on the work, or would the contractors have to work to a disadvantage without dimension stone?

(Objected to as incompetent, leading, and immaterial.)

Ans. You would require to have dimension stone; if they had not got them, they could not go on.

Int. In the directions you gave the contractors for cutting stone during the time you were in charge, did you contemplate that such a peculiar band would be used in this masonry?

(Objected to as incompetent, leading, and immaterial.)

Ans. No; I did not contemplate such a band at the time, but I might have put such a one in afterwards. I might or might not.

Int. In such a class of work as the masonry of this bridge, what kind of band would most probably have been used on the starlings of the pier?

(Objected to as incompetent and immaterial.)

Ans. It would have been what we call "headers and stretchers."

Int. Had you the charge in the fall of 1869, of the construction of the masonry of the piers across the river at Moline, about three miles above the site of this bridge?

(Objected to as immaterial.)

Ans. Yes; I had.

Int. Do you recollect a rise of the river in the month of October, 1869?

Ans. I do; in the fall. I do not know whether it was after that time or not; I am not certain.

Int. Was it an unusual rise at that season of the year?

Ans. I think it was.

Int. Did it do any damage to the Government works at Moline; and, if so, what damage?

(Objected to as immaterial.)

Ans. I don't remember whether it was the first rise or the second that you refer to.

Int. I refer to the rise which damaged the Government works at Moline, by carrying away the dam.

(Objected to as leading and immaterial.)

Ans. Yes, it took part of the dam at Moline; there was no more damage done at that rise than the delay.

Int. Did this rise do any damage, or in any way affect the masonry of the wagon bridge to the island from Rock Island?

(Objected to as immaterial and incompetent.)

Ans. It did, a little; it is trifling; it is not worth naming.

Int. Please state what length of time men in the employ of the Government were engaged, during this rise, in protecting the works of this wagon bridge?

(Objected to as immaterial.)

Ans. I think there were two days; and we worked a little one night, perhaps an hour or two.

Int. It has been stated by Major Stickney, in his testimony in this suit, that the contractors did not take proper measures to protect the dam they had built at the Iowa shore abutment from the consequences of this rise, and that it was slightly built. In your judgment, with such a rise as occurred in the fall of 1869, would this dam, if it had been slightly built, have remained whole when the river went down, or would it have been swept away?

(Objected to as incompetent, calling for a mere opinion.)

Ans. I would suppose it was strong; it would have to be to stand such a rise.

Int. In setting masonry in the river when the dams are all prepared and ready for laying stone, is it easier to work in the setting of stone when the water is high than when it is low?

(Objected to as immaterial.)

Ans. If the water is high and the dams are secure, you have the least hoisting to do in the setting of stone, that would be all the advantage I could see.

Cross examinanined by J. B. Leak, for the Government:

Int. You have stated, that you were directed by Genl. Rodman to give directions to the contractors as to the receiving, and handling, and dressing stone for this bridge. State what direction he directed you to give them, and whether you gave other directions than those he authorized you to give?

Ans. I gave them instructions to go on with the work, as I received them from Genl. Rodman; the directions that he gave me were, that the work was to be done properly.

Int. Can you state the directions he gave you more specifically than that?

Ans. No; I don't know that I can.

Int. Did the contractors know at that time, to your knowledge, that all the plans to the bridge were not definitely decided upon, or that its location was in any way uncertain?

Ans. I don't know whether they did or not.

Int. How soon after the contractors commenced to work did they commence to build the traveler that you have spoken of?

Ans. I could not say that they had got up the traveler, but had not the whole of the tramway completed, when I gave up the charge.

Int. For what purpose was that traveler built, or for what purpose is such machinery designed to be used in the carrying away work of this kind?

Ans. It is for unloading stone, packing it away, or storing.

Int. Are they designed for the purpose of packing away stone for storage in themselves?

Ans. They are not designed for that alone solely.

Int. Was not the traveler of which you speak, built on the island near the water, for the express purpose of raising stone at one end in the yard and moving it along the tramway and depositing it upon boats, to be delivered by them to the works in the river?

(Objected to as leading.)

Ans. I think they used it for that purpose, but I don't know that I ever saw it. Could not say if it was intended to be used for that purpose, but I think it was.

Int. Did you ever know machinery of that kind to be erected for the express purpose of piling up stone and storing it away in itself?

Ans. Yes.

Int. What is the advantage in storing stone inside the traveler?

Ans. It is the room that the stone takes up when scattered.

Int. Does it not all have to be moved away again before the traveler can be used?

Ans. The traveler itself would be that which would take it away.

Int. Where would it take it?

Ans. It would take it along the track as far as it went each way.

Int. That is what the traveler was for; that is, to take it along the track each way as far as it went, was it not?

Ans. Yes.

Int. Do you believe that Harvey & Livesey built that traveler at great expense only for the purpose of storing away stone inside of it?

Ans. I don't know.

Int. You have stated that, when stone is prepared ready for laying, with a sufficient quantity of backing, the value of the preparation would be about two-thirds more than the setting. Do you mean that, when a stone is dressed ready for setting, in the yard, it has cost two-thirds of what it will have cost when transported and placed in its position in the masonry in the river, leaving out, of course, the original cost of the stone itself?

Ans. Yes.

Int. You have attached to your deposition a plan marked "Exhibit A." Do you know yourself, anything about said plan, and how did you obtain possession of it for the purpose of attaching it hereto?

Ans. I do not know anything about it, except that I see it here. Mr. Harvey handed it to me here. I do not know of ever seeing is before.

Int. Do you know that the rise which damaged slightly the work, at Moline, is the same rise spoken of as having occurred in October, 1869?

Ans. Yes; I do.

Int. Did not the apprehension of damage to the Government wagon bridge, which caused you to work two days, &c., arise from some apprehension that some of the piers were not built on solid rock, and they might be cut under by the action of the water?

Ans. Yes.

Int. Have you any promise, expectation, or hope of reward, compensation, or benefit of any kind, from these claimants in case they are successful in this suit?

Ans. No.

Second general interrogatory by the Commissioner: Do you know of any other matter relative to the claim in question? If so, state it.

Ans. I cannot think of any.

RICHARD LLOYD.

Sworn to before mé this 18th day of February, 1871.

EDWARD D. SWEENEY, *U. S. Com.*

Deposition of John Seuthouse, for claimant, taken at Davenport, Iowa, on the 3d day of January, 1871.

JOHN SEUTHOUSE being duly sworn, deposes as follows:

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

JOHN SEUTHOUSE, a witness, produced and sworn on behalf of the plaintiffs:

Int. What is your name, age, occupation, and residence?

Ans. My name is John Seuthouse, age 46 years, and a stone cutter and mason, and reside at Leclaire, Iowa.

Int. Have you any interest in the subject matter in this suit between the parties, either directly or indirectly, if so, what is that interest?

Ans. No, sir. I have no interest whatever.

Int. Are you related to either party, if so, what is the relationship?

Ans. No relation, sir, whatever.

Being interrogated by F. H. Harvey, Esq., for the claimant, the witness says:

I went to work for Harvey and Livesey the last day of August, 1870, as a stone cutter and mason. I went to work at first at the upper rest pier; there was at that time two gangs of masons working on that pier, and there was one gang working on pier No. 1. Plaintiff had at that time—there was six or eight practical masons; there was six masons I know. One mason is considered the head of the gang, who takes with him the requisite number to do the labor; there was a rise in the river at that time; we did not work more than five or six days certain before we were stopped. That rise injured the coffer-dam of No. 5 pier. The dam of upper rest pier was destroyed—it delayed them about two weeks or twelve days. When the water went down I went on the land abutment on the island. I put in half inch joints and beds, and twelve-inch bands. I worked for plaintiffs until the Government stopped them. When we stopped work, the work was as follows: A part of the foundation of the upper rest was put in, about half of the foundation was put, being a part of the two courses. The pivot pier was completed, the lower rest of the pivot pier was completed. The island shore abutment completed. The island land abutment was left unfinished. No. 1 pier was completed. The Iowa shore abutment was completed. The Iowa land abutment, the foundation was completed, and part of one course of stone was put on. No. 2 dam was built, but not quite

ready for the masons. No. 4 dam was built and near ready for pumping out. The dam of the upper rest, we had commenced putting in the new cribs—there was a good deal of sand in the bottom of the cribs. The island abutment was unfinished for the reason that we had not the coping to finish it with. I was on the ground where the coping was stored and there was none there.

Int. In your opinion, is it a disadvantage or otherwise to the contractors to have the coping kept back?

(Objected to as calling for the opinion of the witness instead of the facts that are known to him.)

Ans. It is a big disadvantage. If the coping had been there, they could have finished the pier and have taken the machinery away and used it at some other point. There was no coping there up to the 13th December, 1870. The Iowa land abutment was not finished when the Government stopped us, and there was no coping on the ground when we were stopped. There was no coping there on the 13th December, 1870. I used up pretty near the last piece of coping to finish up No. 4 pier. I went to work right away for the Government, when they stopped the plaintiffs, and continued to work for them until 13th December, 1870. Half-inch joints and beds were required by the Government; I did not see any thicker; there was twelve-inch bands. I saw the machinery used by the plaintiffs in the progress of the work, and the machinery used by the Government—I used both. The traveler I consider the best, it is the kind used by the plaintiffs. I couldn't get on as fast by the machinery used by the Government as by the machinery used by the plaintiffs. There was about one-quarter more men to work the machinery of one than the other. The time lost was about two weeks by changing of machinery and the change from plaintiffs to the Government. We had splendid weather right along through. We had no rise in the river to injure anything. I have worked for both of the contractors before.

(The defendant objects to the answer and the question that produces the answer.)

Int. What is your opinion as to the energy and ability of the contractors to carry on this work?

(Question objected to by plaintiffs as immaterial as calling for the opinion of the witness.)

Ans. I think both of them are about as good men as you could get.

Int. Did they do all that could be done to push on the work, as far as practicable.

(Objected to as incompetent as calling for the opinion of the witness.)

Ans. Yes.

Int. Considering the fine weather that continued from the 8th of October to the 13th of December, 1870, the time when you said the Government stopped the work, would the contractors, had they been

supplied with all the material required, have completed the masonry of the piers and abutments last year?

(Objected to as incompetent as calling for the opinion of the witness and immaterial.)

Ans. They would have completed it. I said the quantity of the stone on the island at the time the Government stopped the work there was not sufficient there to complete the masonry of the work of the piers and abutments. I couldn't say how much more would be required.

Being cross-examined by General J. B. Leake for the United States, the witness says:

I didn't work there at all in 1869, nor in 1870, until the last day of August. One mason and one laborer is a gang, two masons and two laborers would be two gangs. At the upper rest pier there was two masons and two laboreres engaged in laying stone at the time I went there. At pier No. 1 there was one (1) gang, that is, one mason and one (1) laborer. There was three masons at work on No. 1 pier instead of one, as stated in examination-in-chief. These masons had their help with them—there was then three gangs. There was five practical masons at work for plaintiffs at the time I went to work for them, and there was more in the yard whenever they were wanted, that could come immediately—there was enough stone in the yard to keep them all employed—there was three or four to my knowledge—they all could lay stone. Two (2) masons and their laborers were all that could comfortably work at any one time on pier No. 1. There was always sufficient stone in the yard to keep us at work, as far as I could see, during the time we were going. The upper rest pier was destroyed by the pressure of the water; it bursted it in. Sand was brought there to preserve the work; the river was rising when I came there and continued to rise until it burst in; they took means to preserve the dam right away as soon as the water began to come up; it must have rose five or six feet before it burst in, from the commencement of the rise. Mr. Livesey had charge of the work, or seemed to have more charge than any one else. I do not know that they took any means to preserve the work after it was burst in, as I was sent ashore.

Cross. You have said upper rest pier where you had first worked, about half the foundation and a part of two courses were put in. Why did you not put in all the foundation and all of one or two courses?

Ans. We commenced from the tail of the pier to work around to the nose; we got the nose turned; engineers thought there was deficiency in the masonry work and had it pulled up again. I don't know why they commenced on that side of the work; the bottom was irregular, the deep water was next to the river side, the river side some time was under water, it was not cleaned out on the lower side.

Cross. Was there not, up to the time you had to stop work, so much water on the river side of that foundation, or where the foun-

dation should be, that you could not have laid the foundation on that side at all?

Ans. I believe we could have laid the foundation on that side as well as we could have laid it on the other. There was a great deal of water there. On account of pulling the stones up that dam leaked considerably. The object of laying the courses half way round, as far as I could see through it myself, by getting the courses round there and getting the nose turned, we could have thrown the pressure of the water to the pump, that is my own idea. I think the most practical way too, was to do it that way; the water forced itself into the dam mostly from the shore side; the side of the dam next to the river was tighter than the other, for the reason that there was more sand at the bottom of it. The pump was on the up-stream end, on the river side, about three-quarters of the way towards the upper end.

Cross-int. If the water came in from the shore side of the dam, and the pump was on the river side of the dam, explain how the building of the foundation and the courses on the upper side of the pier, between the water and the pump, would force the water on to the pump and enable you to keep the dam dry?

Ans. By having the nose of the first course turned, we could put on the second, and we kept the water behind us.

Cross. Is it the usual course among masons to commence to build the foundation at its highest point, or is it usual to lay the deepest part of the foundation first?

Ans. It depeuds upon circumstances about that. I never saw the bottom of the foundation on the lower side. There was sand in there that had never been cleaned out.

Cross. If you never saw the bottom on that side, can you tell how much or how little, water came into the dam, under that side or that sand?

Ans. There was probably five or six men that could have bailed all the water out, in fifteen or twenty minutes, with buckets; they did it several times; I think it was a very good dam.

Cross. When those stones were taken up at the nose, had they been laid in the water, or was the foundation dry when they were laid down?

Ans. There was some water, it was not very deep, about two inches, when the stone went down into it.

Cross. Did the water run through under the stone after it was laid down?

Ans. I did not see it; did not hear any one say so; I could not say either way. I went to work on the 26th September and was stopped on the 8th October, on the Iowa land abutment. When the Government took possession, there never had been needed any coping on the Iowa land abutment. There had been none needed there on the 13th September; the work was never delayed on account of coping; never has been any needed there as yet as far as I know.

Cross. State at what points on this work, where coping was

needed and where the work of the contractors was delayed and hindered by reason of coping not being provided?

Ans. On the island abutment, I worked on this island land abutment, coping stone covers the width of the entire wall, I couldn't find any on the ground? such course ought to be finished as the wall is carried up, with coping stone on each course. I laid stone myself on the island abutment: I put in all the foundation and nearly all of the first course; I then left and was sent on the Iowa side, and remained there until the Government took possession of the work. I was not delayed myself for want of coping while I worked.

Cross. In what is the great disadvantage of working the machinery provided by the Government, and that of the machinery used by Harvey & Livesey?

Ans. It took nearly double the men to work it; half of the men would have worked the machinery of Harvey & Livesey, when double the number would work the other.

Cross. Then Harvey & Livesey, to have been equally energetic, should have done twice the quantity of stone work that the Government afterwards did, in the same time?

Ans. Yes, sir; I believe so.

Cross. How long did it take Harvey & Livesey to put up one of those piers after the foundation was finished?

Ans. I couldn't tell, because I was not there while they were putting one up, but I have not the least hesitation in saying one could be put up in twenty days.

Cross. How long did it take the Government to put up one of these piers after the foundation was in?

Ans. I think it took a little more than 30 days, if I mistake not. the Government worked two (2) gangs; that is, on the pier I was on they worked two gangs; they were at work on four piers at the same time. Harvey & Livesey were working on the two land abutments at the same time; that is all I know of. There was two gangs on the one I was on. I don't know how many was on the other; I suppose there was about (2) two.

Cross. Do you know of any reason why, under Harvey & Livesey's management, work could not have been going on upon all of the piers, or at least upon several of them at the same time?

Ans. There is no reason, as I know of.

Cross. Was the quality of the masonry done by the Government as good as that done by Harvey & Livesey?

Ans. As far as I know, it was.

Cross. You have stated that in your opinion, there was not stone enough on hand December 13th, 1870, to have completed the masonry and the abutments. State how you know.

Ans. Well, I know from Mr. Warren, who told me there was not stone enough to carry up the abutments. Mr. Warren is the Government inspector. I couldn't see any coping around here, or on the other side on the island to finish it up with. There was not back-

ing stone enough, so Mr. Warren told me; that is all the reason I know of.

Cross. You have stated that you have known those contractors, and done work for them before. Do you know whether they have ever done any river-work?

Ans. I do not know; they have not, to my knowledge.

Cross. Was not the coffer-dam to pier No. 5 broken in and abandoned *before the high water* in September, 1870?

Ans. I did not mean to say that coffer-dam to pier No. 5 was burst in by high water. I didn't know that there was a coffer-dam at pier No. 5 at that time.

Re-examination by F. H. Harvey for claimants, resumed:

You were asked just now, "Do you know of any reason why, under Harvey & Livesey's management, work could not have been going on upon all of the piers, or at least upon several of them at the same time," and your answer was, "There was no reason as I know of." Was there any rise of the river that you know of, that would prevent work on all the piers, or several of them, at the same time?

Ans. I think there was in September, when the upper rest broke in.

And the further examination of this witness adjourned until to-morrow morning, at 9 o'clock, a. m.

JAS. THORINGTON,
Commissioner.

January 31, 1871. Examination of John Southouse resumed at 9 o'clock, a. m.

JAMES THORINGTON,
Commissioner.

In chief:

Cross. You have said that, in consequence of the rise, when you first went to work, the work on the upper rest of the draw-pier was delayed for about twelve days. Was the work of stone-laying resumed upon that pier at the end of twelve days? if not, after how long a time was it resumed?

Ans. I think there was a little mistake I made on that occasion; it was a little longer than twelve days. I should judge, as near as I could tell, that it was about twenty days when they went to work to build the crib-work to get the dam in. They never got the dam in again; there never was any stone-work done there again by plaintiffs.

Cross-examination by General J. B. Leak, for the United States:

Cross. You have stated, that in your opinion, that Harvey & Livesey could have completed the work within the time which the Government afterwards worked upon it, up to the 13th of December, 1870, if permitted to go on, and stone enough had been furnished.

In your opinion, could they have done so by using but one (1) pump for the coffer-dam work, as they had done previously?

Ans. No, sir; I don't think they could have done it with one pump; they could have done it with two pumps. I don't know that they have ever used more than one pump at one time. I believe they used two pumps at one time on No. 2 dam. I don't know as they ever had pumps at work at more than one dam at one time.

Cross. You have said that you have no interest, direct or indirect, in the event of this suit. Have you the promise or the expectation of reward, or compensation, or benefit of any kind, to be given you in the event of the plaintiffs being successful?

Ans. No, sir; not in the least.

Re-examination by F. H. Harvey, Esq., for the claimants:

Do you know how many pumps plaintiffs had in connection with these works?

Ans. I know they had two (2). I don't know how many more they had.

Second general interrogatory by the Commissioner:

Do you know of any other matter relative to the claim in question. If you do, state it.

Ans. Nothing at all, as I know of, sir.

JOHN SEUTHOUSE.

Sworn to and subscribed before me this 31st day of January, A. D. 1871.

JAMES THORINGTON,
U. S. Commissioner for the District of Iowa, and ex-officio Commissioner of the Court of Claims.

Depositson of E. D. Dixon, for claimant, taken at Davenport, Iowa, January 31st, 1871.

E. D. DIXON being duly sworn, deposes as follows:

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

E. D. DIXON, a witness on the part of the plaintiff, produced and sworn:

Int. What is your name, place, occupation, and residence?

Ans. My name is E. D. Dixon, aged 33 years the 14th day of this month, residence Davenport, Iowa, occupation an engineer.

Int. Have you any interest in this suit, either directly or indirectly?

Ans. I have none.

Int. Are you any relation to either of the parties to this suit; if yea, what is that relationship?

Ans. I am of no relationship to either of defendants, and am a citizen. Of the plaintiff, no further relationship.

Being interrogated by F. H. Harvey, Esquire, for the claimants, the witness says:

Int. When did you first commence work for Harvey & Livesey?

Ans. Commenced work the 28th March, 1870, for plaintiffs. The nature of the work was, the first work I did was to go from here to Muscatine and bring the steamboat Oriole from there to Davenport. I had other work to do. The boats belonging to plaintiffs were shoved upon the shore by the ice, we had to put them into the river. (Defendant objects to witness stating the number of boats belonging to plaintiffs, or any evidence relating to pulling boats out of the ice, not only the witnesses stating it, or all questions relating therto, as being immaterial, incompetent, and irrelevant.) There was six (6) boats altogether, stone boats, scow boats. I think there was three boats we pulled off the bank; there was six boats altogether; the boats we pulled off the bank were shoved up there by the ice; they were pretty badly racked by the ice; they were racked in pushing the boat out of the ice without any skids; they were warped in shoving them out on the shore; they rocked so that the boats had to be caulked; there was three boats that were broke up, made useless at that time. The damage done to all the boats there, I should judge to be about $1,000 or $1,100. The boats that were destroyed in the fall—the three that was destroyed was the best.

Int. Did the ice damage any thing else belonging to plaintiffs, if so, what?

(Objected to by the defendant as being incompetent, and immaterial, and irrelevant.)

Ans. It damaged their traveler frame (two of them.)

Int. Can you form an estimate of their damage, if so, state it?

Ans. I should think damage was in the neighborhood of $700 or $800. One of the frames was on the island of Rock Island, the one we loaded the stone from the shore to the boats, and the other was on the Iowa abutment.

Int. What position was you in on the steamer Oriole?

Ans. I was captain and engineer: it was employed to do the towing from the shore to the piers; from the sand banks to the coffer-dams, and to do all the towing in general. I worked for plaintiffs from the 28th of March, 1870, until after the 8th October following.

Int. During that time were there any rises in the river, and when did they occur?

(Objected to as being irrelevant and immaterial.)

Ans. There was a rise in the river when I went to work for the plaintiffs, and continued along until April, when it stopped us from working. We commenced to build the coffer-dams of the island abutment in April with twelve feet plank, and the river kept on rising until it overflowed the plank and the men had to quit work. The delay in the work in the river was a little over or between three or four weeks at that time. All that was said to me at the time of this rise, Mr. Livesey said they would have to stop the work and protect what they had done. The next rise that occurred was in July 1870, when it rose about three feet or thirty inches, which delayed the work in the river some seven or eight days on No. 1 pier. The next rise was the latter part of August or the 1st of September, and continued, as near as I can remember it stopped the work in the river for about two or three weeks; it was about a seven feet eight inch rise; that rise damaged the work, by carrying along the dam of the upper rest of the draw pier; it carried away the traveler frame of the dams of the upper rest; it carried out a little over half of No. 5 dam, that was built; it washed away a great deal of sand out of No. 2 dam; it tore up considerable of the break waters; the rise lasted about two or three weeks; it went down slow; the contractors went to work again on No. 2 pier before the dirt had got dry; there was all of five feet of a rise above low water mark at the time the work was begun again. They commenced again so soon to rush the work on.

Int. When the dams have been prepared and ready for the masonry work, have the men been able to go on at once?

Ans. When the dams were pumped out, we had a great many men in there that had to do a great deal of work in there before they set any stone. I remember when they were sinking No. 4 dam they were delayed one afternoon for the marks to get the right location of the dam. The cause of that delay was that the Government surveyor was not there. During that time a great number of men was delayed. I supposed about twenty or twenty-five men were kept idle waiting for the Government surveyor; he came in the afternoon. Mr. Asherwood said it was too late to sink it that afternoon; they could not secure it.

Int. Have you worked at the building of any bridges on this river before; if so, where?

(Objected to as being immaterial.)

Ans. Yes, sir; I worked for the Burlington Bridge Co., on their tow-boat. I worked awhile for the Quincy Bridge Co., on their stone-boat, at the time they were building their bridge. At the time I was working for those bridges rises occurred in the river; they stopped work and protected their work. I see the work stopped at Burlington on a rise of three or four feet. I never see the work car-

ried on at the places mentioned on so great a rise as I see them carry on work here.

(Defendants objected to the interrogatories and answers relating to the rise and witness' connection with other bridges, as being irrelevant and immaterial.)

Int. Do you recollect any delays in getting stone and material that took place during the time of your employ by plaintiffs? and, if so, state them.

Ans. I remember of several days that we made a number of trips to the shore with the flat-boat, to get coping-stone for the pivot-pier. They put one stone on the boat, or two or three at a time. We made trips with only one, two, or three stone at a time; we made as many as nine or ten trips in that way; that was the only quantity that was ready at the time. If the coping-stone had been ready we could have taken in out in two trips. We had to carry all the cement from the shore to the work. I recollect one day I was sent to the shore to get cement for the pivot-pier; the teamster who hauled the cement told me there was no cement there; that stopped that work for the afternoon, and the men were sent ashore. I have known the Mississippi river about eighteen years. The current of said river at an ordinary stage of water where the bridge is being built is about five and one-half miles an hour; as the river rises it increases the current about two miles an hour on a four-feet rise. At the rise in the river that occurred in September, 1870, I took from the island as high as four to eight loads dirt a day; the loads would average in the neighborhood of forty-five yards in each load. They were put in No. 2 dam; it was called fencing to keep above the water. In this way we fenced nearly four feet to keep above the water. The water raised, however, so fast that we could not bring sand as fast as it raised. I was working on the Jenny Brown about eight days.

Int. Do you know the nature of the charter under which the "Brown" was employed by plaintiffs.

(Objected to by defendants, for the reason that it is not the best evidence, the charter being in writing.)

Ans. Mr. Pierce and Mr. Negus, the owners of the boat, told me that they had chartered the boat to the plaintiffs (further objected to, that above answer being heresay evidence) for forty dollars per day from the 1st (or about then) July, 1869, until the 1st December, 1869.

Int. Do you know about what amount of towing the boat did?

Ans. She towed sand for plaintiffs for building, what amount I do not recollect; and dirt for filling coffer dam for the Iowa shore abutment, and she towed stone across the river for the Iowa abutment. In July she went to Quincy and towed a pile driver and some machinery that was there. To keep the boat constantly at work to do the amount of towing mentioned, (here the defendants object to answer, for the reason that evidence is incompetent and irrelevant,) I think the Jenny Brown ought to have done it in ten days. Since the Government has had the work in their charge they have em-

ployed two steamboats. The amount of towing done by these two steamboats I know, and I think the steamer Oriole alone could do as much as these two did do; for the reason that we loaded our boats to all they would carry with safety, and it was to be had. The names of the two boats are "Winneconnee" and "Leclair." I have been out on the works since they have been carried on by the Government, pretty much all of it. I never had heard anything said about the work, except on No. 5 pier. I was on that pier the day they abandoned it. I heard the man that was kind of bossing it then, who had worked for Case & Co., who said they never would be able to lay a stone in that dam, and I asked him the reason why? He said because they could find "*no bottom.*" The men were driving a rod inside of the dam at the time (during this defendants objected to the entire answer, and a motion to strike it out as heresay evidence). The rods, he said, was already driven nine feet, and they had not yet found bottom, and that the dam was undermined. I heard Major Stickney say that they would have to abandon the dam, and said he wished he had never seen it; that was the way he spoke. He didn't say it to me, it was to a gentleman that came on the dam with him. I didn't know who it was.

Int. During the time you worked for plaintiffs, did you see any unnecessary delay on their part, in carrying on the work?

(Objected to, for the reason that it is calling for the opinion of the witness.)

Ans. I did not, sir, to the best of my knowledge. Whenever it was practicable they pushed the work on as fast as it was possible for men to do. My opinion of the machinery that was used by plaintiffs is that it was good, equal to and the same kind of machinery that was used in the building of the Quincy and Burlington bridges; for the hoisting and setting stone it was the same kind.

Being cross-examined by General J. B. Leak, for the United States, the witness says:

I have worked at work in bridge building; I have run an engine in pumping out a coffer dam in bridge building; I have run a spile driver for 3 or 4 days, that is, the engine of the spile driver. I was under pay in connection with a boat, and whenever I had seen any thing that was necessary to be done, I have went and done it. Never have helped sink a coffer dam until I came to work for plaintiffs. I have never had anything to do with bridge building, except as incidental to my being connected with a boat, or as being an engineer, or as running an engine. I am not a stone mason; have never laid a stone as a mason; have never put the materials together in bridge building; never, only as running an engine, in spile driving, or in boating in conveying the materials as engineer, have I done any thing as bridge builder.

Cross. You have stated that, in July, 1869, you went to Quincy, and towed a spile-driver and machinery. State for what purpose this spile-driver and machinery were to be used, and were afterwards used by plaintiffs? State what the machinery was?

Ans. I went pilot on the Jenny Brown, for Pierce & Negus. At the time mentioned, the spile-driver had an engine on it, that was used for pumping out coffer-dams; it was used for putting up the traveler; it was just the engine that was used; there was no coffer-dam pump on it that I saw; there was the travelers and jennies and gearing on this boat. The spile-driver was used as a derrick for hoisting up pumps and setting them down in the coffer-dam. I was on the Jenny Brown at that time, four and a half days. The boats I testified about were laid up in the fall, just below Mr. Dinkmare's mill, on the other side of the Mississippi river, below the point. I did not see them put away, but saw them shortly after they were put away.

Int. Cross. Do you know what means were taken by plaintiffs to take care of these boats on the breaking up of the ice in the spring?

Ans. I don't know of any means that was taken by them. The boats were pushed out by the ice. On the banks the Jenny Brown was about 35 feet from water when I saw her, and she was outside of these boats.

Cross. You have stated the damage to these boats was between $1,000 or 1,100 dollars. State the items that comprise this damage, and the separate damage for each item.

Ans. Yes, according to my judgment, it was. There was one boat 60 feet long, 16 feet wide, was a total wreck. I should judge to build a boat of that kind, it would cost $400. The side of the spile-driver boat or gunnel, as it is termed, was broke in for about 8 feet; the repairing of that would cost about $200. There was one boat 85 feet long, 14 feet wide; they tried to repair it; after it was launched we loaded it once or twice, and found that it was not safe, and we threw the boat away. I should judge that boat was worth between $450 to $500; those other boats—three—were all caulked. I don't know what it cost to caulk the boats; caulkers are generally pretty high-priced men; I should think it would cost from 75 to 80 dollars apiece to have it done. I warn't there when any of it was done.

Cross. How do you arrive at the value of any of these boats you have testified as to their worth?

Ans. I arrive at that by being interested in several boats in my time.

Cross. Wouldn't all of these boats have to have been caulked in the spring after being laid inside all winter?

Ans. I have known boats of this kind to have run as high as five (5) years without being caulked. Those boats—all three I mean—were caulked by Mr. Van Zandt along the last of May, or between the last of May and the last of June, 1869.

Cross. You have stated that traveler-frames, both on the Iowa and island side were carried away by the ice. How far from the shore out into the river were these frames respectively built?

Ans. The frame on the island was built out from the shore four stanchions (about 80 feet) on the island side, and on the Iowa side it was built outside of the abutments. I don't think it was over 3 or

4 feet outside of the abutment. It might have been a foot or so over, but I don't think it was over 3 or 4 foot. The frame on the island was left standing in the water when the river froze up. The frame on this side (part of it) was on the coffer-dam, and part of it in the water; the part that was built in the river was left standing in the river; those that were in the river or water was frozen up with the river. I looked at them, and thought the traveler on the side of the river was in danger of being carried away in the spring with the ice; the traveler on the island I thought otherwise, but I was deceived.

Cross. In your judgment was it the exercise of ordinary prudence, in a river like the Mississippi, to leave stanchions to be frozen up in that manner, with the expectation that they could not be injured in the spring, when the ice went out?

Ans. In my judgment, the traveler on this side I would take down, the one on the island I would not; the reason is, that the gorge seems to set out from the other shore. I would take them down now, from what I know of the river.

Cross. What condition was the work in at the time of the first rise you have testified to in the spring of 1870?

Ans. Well, sir, the river was rising; we went to work to build a coffer-dam on the island abutment where the ground is more dry; the water came up and covered the top of twelve feet plank; it came over the plank about the time we had the dam about (well, I should judge,) nearly half done, so that we had to quit work there; well, during the time they were working there Mr. Jos. Livesey had a gang of men repairing the travelers; he got them done during the water rising, and they went on building up the abutment on the Iowa shore. The damage done that dam by the overflow was considerable; badly wrecked, so that they had to take up some of the sections of the timbers and put new ones in their place; this coffer-dam was on the island abutment at this time; no stone had been laid anywhere except on the Iowa shore abutment, and no dam built except this. There was but very little of the dam of the Iowa shore abutment in at that time, the ice had carried it away; it was of no use at that time.

Cross. Did Harvey & Livesey have any more stone masons employed than could work at one abutment at a time comfortably?

Ans. I could not say; there was a great many men around there at the time. I don't know that they had or that they had not.

Cross. How long before the coffer-dam around the island abutment was ready for the stone-masons to work on that abutment?

Ans. I think we finished the dam about eight days after we began, and then there was a great many quarrymen down in there working night and day for about, I judge, seven or eight days before the masons set a stone.

Cross. At the time they got through this quarrying, had they completed the stone work of the Iowa abutment?

Ans. Yes, sir; they had completed it.

Cross. How long?

Ans. I should think it was about two weeks. Mr. Jos. Livesey was a handy man about everything; other masons laid off; there was no other dams ready in the river; no other travelers up to set stone elsewhere. I have heard Mr. Harvey say he would like to do what dry work there was there, so as to keep the men at work. The fall previous, there had been no dam put up any where except the Iowa shore abutment. I heard from good authority that the reason why no work had been done on the island abutment was, that the bridge had not been located by the engineers. I heard from Messrs. Harvey & Livesey and other citizens, (defendants move to strike out this answer for the reason that it is hearsay evidence.)

Cross. How long after they had commenced on the island abutment before Harvey & Livesey prepared work for the next pier?

Ans. As soon as Capt. Anderson was done building the dam for the island abutments, he went right to work putting in his break-water for the pivot pier dam, and a part of his men was framing the dam to put in; he got that dam completed — I think we were about four weeks, to the best of my knowledge. The dam was built, and in pumping it out the side of the dam broke in, and it let a great deal of sand inside, that had all to be carried up out of the dam, (the greatest part of it;) then there was three or four days in getting that out: and there was between two and five days smoothing the bottom for the men to commence setting stone; the men commenced right away; the island abutment was completed a week before. Part of the same gang of men that was on the island abutment went to work on this pier, (pivot pier.) My idea of the breaking of that coffer-dam is, that the man that built it did not know his business. Capt. Anderson built it. The timbers were framed for the next coffer-dam before they completed this one; this dam was the low rest of the same draw pier; they were about fourteen days putting that dam in; it was a small dam; it was the same width, but not so long as the other. At that time they had not got the mason work done of the central draw pier; there was two gangs at work on the central pier; they put masons in as soon as the water was pumped out. Mr. James Livesey and a man by the name of Jake, left the central pier and went to work on the lower rest pier, and other men took their places on the central. The next coffer-dam was No. 1 dam; it was the next built, the first pier next to the Iowa abutment. I think they went to work to sinking the cribs for break-water, while they were framing the timbers and rigging up a speed boat. They were about twelve days before they completed the dam. Capt. Anderson built this dam; it was the smallest dam, up to this time. The next dam they went at right away, to sinking their cribs for the break-water for the upper rest at the draw pier. They were between eighteen and twenty-four days; I wouldn't be positive that it was twenty-four, but it was between those numbers. As soon as the dam was done the masons went on the work, whether the other piers were done or not; the dam-builder did no more than

keep ahead of the mason-builder. Mr. Harvey got Mr. Isherwood and Harvey Tracy to push the building of the dam ahead. The stage of water at the time they commenced building the abutments was up; at the time they went to build the pivot pier I heard the engineer say, and afterwards I tried the water and found that there was about fourteen feet and four inches of water at the pivot pier, on the Iowa side of said pier. Capt. Anderson quit the day they got the upper rest coffer-dam of the upper pier finished, and Mr. Isherwood and Harvy Tracy took charge of the work.

Cross. Now, how soon after that, did they commence to build the next coffer-dam, and when was it.

Ans. It was No. 5—it was right away,a coupple of days or three —that coffer-dam was never completed—they worked about four days. One of the timbers broke in the bottom of the dam, Mr. Livesey was very anxious to get a dam in. Mr. Isherwood wanted to take up that section of the dam and put in another timber, and go on and finish that dam. Mr. Livesey told Mr. Isherwood to let that dam stand and go over and put in No. 2, and Mr. Isherwood started over. I went to work at No. 2. They lost about four and a half days before they went to work on No. 2. They were four-and-a-half days putting in the coffer-dam at No. 2. The water came up and we tried to fence against it about ten days. I think we built that dam with a raise of four feet—the water raised and beat us. Mr. Isherwood commenced putting in plank, planking the water higher is the means we used to keep the water out in filling it with dirt; just as the water rose we kept going around it. We towed stone out to the masons, which was a small job; the balance of the time we were hauling sand to No. 2. coffer-dam. The masons were at work at that time at No. 1.

No. 1 was finished about the last of August or 1st of September, as near as I can remember. By the water overflowing the dam at at No. 2, it was about three weeks before the water was pumped out before the workmen could go to work. Pier No. 1 was finished before the water at No. 2 got to its highest; it was finished about three weeks before pier No. 2 was ready for the stone masons. During this rise Mr Isherwood started Mr. Harvey Tracy building dam at pier No. 4, but the water came so fast on to him that he had to abandon it. During this rise of water it swept out what was left of No. 5; it took also the dam on the upper rest of the draw pier; this was in September. Mr. Harvey Tracy, after the water fell, took up the head of No. 4, repaired it, and sunk it again, and built the dam in six days. There was no mason at that time in No. 4; they went on putting up the traveler, and Mr. Harvey Tracy went over and started the dam of the upper rest of the draw pier. He had it, as near as I can remember, about half done when the Government took the work. At that time the dam at No. 4 was built but not pumped out.

No. 2 was pumped, and men were digging down in the crevices to

find a foundation, but they found but one little place, at the upper end they got down to the rock.

No. 3. There was nothing done.

No. 5. The cribs of the brake water was in, nothing else; so that at the time the Government took possession, No. one (1) was complete (from the Iowa side). The Iowa and the island abutments were complete; the lower rest of the draw pier was complete; the pivot pier of the draw pier was complete; but at the upper rest of the draw pier there was about half of the bottom course laid, and had started another course on top of that. No stone laid in either 2, 3, 4, or 5.

Cross. The first rise took place about the first of April, or the last of March, and the second rise about the middle of July, or nearly so, a period of three and a half months or thereabouts.

Int. What part, or any part of the work, had Harvey & Livesey done or completed at that time?

Ans. Yes, sir; they had finished the island shore abutment; they had finished the draw pier, the pivot pier, all but the coping; they had finished the lower rest of the draw pier, and had finished up the work on the Iowa shore abutment of what they had left the fall before unfinished. At No. 1 pier they had it pumped out and the traveler put up, and had a boat load of Stone there; men in the bottom shovelling and cleaning away the bottom for the masons to go to work; there was a raft run over the break-waters and shoved over the fencing, as we called it, and the dam filled with water, besides breaking the traveler frame down, throwing the traveler and jenny into the dam; they had done no other stone work up to this time. Captain Anderson was putting in the break-water for the upper rest of draw pier, and framing the timbers also for the dams. There was nothing else as I remember of at that time.

Int. The next rise took place in the latter part of August or the first of September. State what stone work was done between the interval of the first rise and this time?

Ans. The coping on the pivot pier was put on, and they were building No. 1 pier; they hadn't it done at the time of its commencing to rain, but they got it done before it got to its highest. They were building the dam of No. 2, and had built up part of the dam of No. 5, and had built the dam of the upper rest of the draw pier, and started to build No. 4 dam. That is all that I can remember. I can't remember the work on the island land abutment, because I hadn't anything to do with that—the material was taken there by wagons. The river was lower about the last of June or 1st of July, than at any time during the time that we worked there.

Int. Between the rise which took place the last of August or the 1st September and the 8th of October, what stone work was done in the river by Harvey & Livesey?

Ans. They did none in the river—they worked on the Iowa land abutment.

Int. What means were adopted to protect the dam at pier No. 1 against rafts?

Ans. The crib work was built up higher and logs were put in on to them, and there were braces put from the crib down against the main dam to strengthen these cribs; from pushing over they built them up once, and the water came within ten probably twelve inches of being over the top of them; the rafts struck them and shoved the top over and went over the top of the dam. If the cribs had been built up several or twenty feet higher, it would not have stopped that raft. I don't think that it would have kept it off the dam.

Int. If the cribs had been properly constructed, and then properly built up with the rise, would it not have turned that raft off from that dam?

Ans. Those cribs, according to my judgment, were properly constructed and properly built, and filled as well as any man would put in for temporary use; they didn't and I don't think they would have turned that raft, and they were properly built, up with the rise.

Int. In your judgment, is the keeping of a crib and break-water twelve inches above the water a proper protection for such a dam against rafts?

Ans. It is if you have the skids in, good and solid. Skids are put in up the current there to break the cupplings and break the raft, and have the logs fall back on one another. When the water is high, the rafts flood over the skids on to the top of the work.

Int. You have said, after this September rise, you commenced so soon afterwards to rush the work. State what work was so rushed?

Ans. The work in general.

Int. What time was this that they waited for the location of pier No. 4 to sink the dam?

Ans. It was not pier No. 4, but pier No. 2; it was in August, along about the last; couldn't say what day it was; just before the river commenced to rise; it commenced to rise in a very few days afterwards.

Int. Had not the engineers, previous to that time, given this location, and had it not been lost or deranged in some way, by change of boat, or in some other way; and it was necessary to give it again?

Ans. As to that, it is something I couldn't say. I couldn't say that Mr. Scott had ever been there to make it out, but in the forenoon before Mr. Scott and Mr. Isherwood was standing on the deck of the Oriole, Mr. Isherwood told Mr. Scott he would be ready to sink that dam the first thing after dinner, and he wanted him there to give him the marks. That is all I know about it. I know that there was delay that afternoon about it, by sending my foreman over to Rock Island to look after Mr. Scott. Mr. Isherwood asked to send my foreman. Mr. Isherwood told me that he could not sink the dam that afternoon unless he got the marks.

Int. Do you know that that was the cause of the delay that after-

noon, except as Mr. Isherwood, or somebody else in the employ of the plaintiffs, told you?

Ans. All I know is from what I heard Mr. Isherwood and the engineer talk about.

Int. State the time when the delay occurred in getting stone, particularly?

Ans. It was during the month of July, before and after the rise, the delay occurred about coping stone. This delay continued. I couldn't exactly say how many days it was. The delay in obtaining cement was in June, between the 1st and 20th; it occurred only on one afternoon. All I know about it is that the teamster said there was none in the cement house. Next morning I took several barrels which a drayman brought from Rock Island.

Int. Was there any delay in the laying of stone by reason of this lack of cement at that time, or had they stopped work at that time?

Ans. I don't know.

Int. You have said that in the rise of September, 1870, the rise came so fast that we couldn't keep up as fast as it raised. How long was it rising to its highest?

Ans. I should suppose it was, any how, 12 days.

Int. You have said that they put in the whole of dam No. 2 in four-and-a-half days. Why couldn't they, with anything like the same energy, keep ahead of the rise in 12 days?

Ans. We couldn't get dirt there fast enough to fill it to keep ahead of the rise. We have taken from four to eight loads a day of dirt, that is about as many as we could take from where we had to go for it. In the first place, if I recollect aright, it took forty-two or forty-three loads to bring it to the surface of the water. We were about eight days in putting that forty-two or forty-three loads in that dam. I mean that Mr. Isherwood and his dam builders was four-and-a-half days building that dam, to wit: No. 2. A dam is built before it is filled with dirt.

Int. Didn't you say that the dam was completed by Mr. Isherwood in four-and-a-half days?

Ans. I said the dam-builders completed the dam in four-and-a-half days. Completing the building of a dam (the filling is not the building of a dam,) it is the sinking of the frame, planking it ready for filling.

Int. Are we to understand, then, that heretofore whenever you have spoken of completing a dam, you have meant simply the finishing, planking, and sinking the frame?

Ans. The completing of the building of a dam: is a dam, the frame sunk, planked all around and enclosed. The completing of a dam built, is a dam filled and pumped out. That is my idea of it.

Int. State what time you left work on the Jenny Brown, which was working for Harvey & Livesey in 1869?

Ans. It was on or about the 20th November.

Int. How much stone-work had been laid in the river by Harvey & Livesey, and when was it laid, if any?

Ans. I couldn't tell you how much was laid up to this time. Whatever was laid, was laid in the Iowa shore abutment. There was none, according to my knowledge, anywhere else.

Int. How long after this time did Messrs. H. & L. quit work for that season?

Ans. I heard Mr. Livesey say that they quit on the 26th November.

Int. You have stated you knew how much towing was done by the two boats "Winneconne" and the "Leclaire" since the Government took possession of the contract. State how you know.

Ans. I said I knew pretty well the amount. What I judge by is the amount of work the Government had done, as I have seen it since it was done, and therefore I know pretty much what work must have been done. I went away about 14 or 15 days after the Government took charge of the work, to Dubuque, and then afterwards went to St. Louis; the two trips didn't take over 15 days.

Int. You have said that the "Oriole" alone did tow as much materials as these two steamboats did do. Do you mean to say that your boat, the "Oriole," did do, or could do, as much work in the way of waiting upon the workmen of this bridge, in the way of furnishing material, &c., in any one day as these two steamboats, "Winneconne" and "Leclaire," did in any one day?

Ans. I meant to say that we have towed more square yards of dirt in one day than the "Leclaire" ever towed in one day. I mean to say that we have towed more stone out to the works in one day than the "Winneconne" ever towed in one day. I mean to say that there never was a day last summer, during the time that I was running the "Oriole" for H. & L., that she ever laid up on account of the wind; that I heard that both of the others have laid up on account of wind.

Int. Will you now answer the question next above in the terms in which it is put, or decline to answer it, one or the other?

Ans. Yes, sir; I think she could.

Int. What was the value of that machinery you brought up from Quincy at the time you went down, in your judgment?

Ans. The machinery on that boat, from what I know of machinery, was never got up for less than $20,000, to the best of my knowledge. It looked like second-hand machinery. I don't know that the machinery was any the worse for wear; the spile-driver had been used at the Burlington bridge; the other might have been used at the Burlington and Quincy bridges. The engine had never been used, as I know of, here at this bridge for any other purpose than pumping out coffer-dams. Where they first obtained that engine I couldn't tell; it was in the first week of July, 1869; what day can't exactly say. We started down on the Jerry Brown to get the engine which was afterwards used in pumping out the coffer-dams, together with the other machinery. The spile-driver and engine were not

used together, according to my knowledge, by H. &. L.; the engine was only used to pump out coffer-dams. I have heretofore said the spile-driver was used in lifting out and putting in the pump in the dams, and other places as a derrick, which is correct.

Int. You have said that you have no interest in this suit. Have you any promise, or expectation, or hope of reward, or compensation from these plaintiffs in any way, if they are successful in this suit?

Ans. I have none, sir.

Re-examination by F. H. Harvey, Esq., for claimants:

Int. You have said that you have known the Mississippi river for eighteen years. Did you ever know so great a rise in the month of September in any year previous as the rise that occurred in September, 1870?

Ans. I don't think I ever seen the water come up as fast and so high as early as that.

Int. Have you ever heard any person say, who have lived on the river for many years, that they ever knew so great a rise in the month of September as the rise that occurred last September?

(Objected to as incompetent and heresay evidence.)

Ans. I have heard several say—pilots—Mr. Hale, one of the oldest, for one—they have never known such a rise so early in the fall before.

Int. You have said that there was no stone work in the river done by Messrs. Harvey & Livesey after the rise in September until October, when they were stopped by the Government. If you know what other work was done by them during that period, state it?

Ans. They went on to No. 2 dam, braced it, put their pump into it, pumped it out, and put men into it, digging down and carrying the dirt and loose stone out of the dam to find solid foundation. They went on and finished No. 4 dam ready to be pumped out; and then they put the traveler frame up on No. 4; and then they went on to building the dam of the upper rest of the draw pier; for the other draw had been carried out by the water. It is about all I recollect that was done in the river.

Int. You have said that you first went to work for Harvey & Livesey on the 28th March, 1870. When you spoke just now of the spile driver being used to lift the pump in and out of the coffer dam, did you mean that you saw it so used after you went to work for Harvey & Livesey?

Ans. Yes, sir; I have seen it used for that purpose and at that period.

Second general interrogatory by the Commissioner:

Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I don't know that I do.

E. D. DIXON.

Sworn to and subscribed before me this 31st day of January, A. D. 1871.

JAMES THORINGTON.
U. S. Commissioner for the District of Iowa, and ex officio Commissioner of the Court of Claims.

Deposition of Wm. Harris, for claimants, taken at Davenport, Iowa, February 1st, 1871.

First general interrogatory by the Commissioner.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. William Harris; my occupation is that of a stone cutter and mason; my age, 35 years the 4th of September last; my place of residence the past year, Davenport, Iowa; I have no interest, direct or indirect, in the claim which is the subject of inquiry. I am not related to either of the parties.

Being interrogated by H. F. Harvey for the claimants, the witness says:

I went first to work for the claimants about the 14th day of June, 1869; my work was stone cutting. There was between thirty and forty of us that went to work about this time. There were other men employed in loading cars and doing other work. I mean laborers, carpenters, and blacksmiths, &c.

I should think there were thirty men employed, besides stone-cutters and masons, and so there were altogether employed by Messrs. Harvey & Livesey about sixty men.

I continued to work at that time about one month for complainants, when the work stopped. Mr. Harvey and Mr. Stickney came there together, and Mr. Harvey told us to stop. Mr. Harvey said it was harder on him to stop than it was on the men to stop. I asked him for how long it was to be stopped? He replied; may be a day or two, a week or two; he could not tell. All hands left the island. It was about five or six weeks before I resumed work again. I went to stone cutting again. I think there was fifteen resumed stone cutting when I did. I worked about one month at this time at stone cutting. I went to work at the Davenport shore abutment. I was there for the purpose of trimming and changing the stone that had been cut before. We were first instructed to cut the stone square, and when we resumed the work we were told to put a batter on the stone half inch to the foot rise, all the stone that had been cut had to be altered in this way.

The coffer-dam was built at this abutment, and pumped out, the bottom exposed. We did not then commence laying stone

away. When I went the bottom was already exposed, and so continued for five or six days until I went to laying stone. There was a good many men there building, and there were a good many waiting to see if Major Stickney wanted any more of the bottom blasted out. Major Stickney I saw there nearly every day; he did not require any more of the bottom blasted out, and at the end of the five or six days I went to laying stone. It was a rock bottom upon which we commenced laying stone. I was on the work when the order came to commence laying stone. I don't recollect who gave the order; it was either Major Stickney or the inspector. The bottom was precisely in the same state when I commenced laying stone as when I first went there. I continued to lay stone for about a day and a half, when the river rose and overflowed the dam. We left work there and went back to the island and resumed stone cutting. I don't remember how long the rise continued.

Int. Had you been enabled to commence stone laying in this dam when you first went there to work, would you hrve completed the masonry of the abutment to such a height as to have had it ahead of the water at the time of this rise?

(Objected to as incompetent, and as calling for the opinion of the witness.)

Ans. Yes, sir.

Int. Within what time could you have built this abutment with the force employed, if there had been no delay?

(Objected to as incompetent, as calling for the opinion of the witness.)

Ans. In about twenty days. I went back to work on this abutment when the water went down. I worked there a few days and then went back to the island to cut some coping. Before I went back to the island to cut some coping there was a delay at the abutment of two days for the want of cement. The want of cement pretty much stopped work with all hands. It was in November this delay for want of cement occurred; the day I don't recollect, for we were paid and I took no note of the particular time. Inspector Warner gave us the order for dressing coping and other stone worked on. Our orders by the contractors were not to commence to work dressing stone unless it was first approved by inspector Warner; he always approved the stone before they came off of the car. All the stone that came off the car, Mr. Warner put upon those we were not to touch a black cross of paint, and those he condemned; we were told not cut them at all. Sometimes, after we had cut stone which had been passed or approved by inspector Warner, he would find some fault or flaw and condemn them. I had personally three or four stone thus condemned, to my knowledge; other stone-cutters had stone condemned in a similer manner. I never counted the number in all that had been partially cut and condemned in this manner; quite a pile, probably forty or fifty of them. In 1869 I was paid for stone cut in this manner—I worked these by the foot; th
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afterwards I worked by the day, and was paid for cutting stone, whether condemned or not. I first commenced work in 1870, about the 1st April, for the contractors; I went to work at the island shore abutment filling coffer-dam. I went first to work in 1870, laying stone on the lower rest of the draw pier, and continued to work there until it was finished; did not notice how long it took to finish. I then went to work on No. 1 pier, and worked on that pier until it was finished. We was twenty days and eight hours building that pier. I recollect a rise in river in September. I was then working at the upper rest of the draw pier. The river was rising when we went to work there—that rise stopped our work there—that rise took away the traveler frame, and swept the dam out; it stopped all work there. I went back to the island then cutting stone, and worked there only a few days, and then went to build the land abutment at Rock Island side. I did not finish that abutment; we run out of stone; we were stopped for want of coping stone. We came on the Davenport land abutment to work; we did not finish it—we put on one course and we had no coping. We were stopped by the Government. I know that there was no coping—I was dimension boss, and I know there was none on the island.

Int. During the whole time you were employed by complainants, did you see any want of energy on their part in the progress of the work in building this bridge?

(Objected to as being incompetent, as calling for the opinion of the witness.)

Ans. No, sir; I did not.

Int. Did you and the other men work whenever it was practicable to do so?

Ans. Yes, sir; we did, nights and Sundays. When I ceased to work for complainants I went to work for the Government. I never seen any stone condemned there after we commenced cutting them. I have seen some stone that was condemned when I worked for H. & L. used while I worked for the Government. I cut a lot of this condemned stone. I think they were afterwards laid. I couldn't say how much of this condemned stone was used, but there were seven or eight of us men went back to work, and done nothing else but work condemned stone for two or three weeks. When I worked for complainants we were confined to half-inch joints and beds and twelve-inch bonds. I saw a stone that had an eleven-and-a-half inch bond only and Inspector Warner directed it to be taken out because it was not a twelve-inch bond. It was taken out. That stone was used in the pier somewhere else. When I worked for the Government I was not restricted to half-inch joints and beds. When I was working for the Government I seen some pretty rough joints. When working on No. 4 dam I saw joints from one inch to one and a half-inch wide—that is, that much mortar between two (2) stones; what we term bedded in mortar. I didn't see any anywhere else that was as bad as this on pier No. 4. I saw, however, a good many joints that was over one-half of an inch. During the time

worked for the Government we did not make twelve-inch bond; we didn't have an inspector on the work. The smallest bond I have seen while working for the Government was four inches. I saw that stone laid myself. We were never very particular until we got above water; the bonds were from six to seven inches. I have seen some that were twelve inches; they vary. I have worked at bridge building for about twelve years.

Int. In your judgment, has the work been carried on by Government as economically as under Harvey & Livesey?

(Objected to, as calling for the opinion of the witness, and as incompetent.)

Ans. No, sir; I think not. My reason for thinking so is, that the Government always employed more men to do the same work; they hadn't the same machinery to do it, and they paid more wages to their men. I received $5 per day from the Government. Complainants paid me $4 per day for the same amount of work. I could'nt work with the machinery used by the Government with the same facility as the machinery used by the complainants.

Int. Did you ever hear any one on the works express an opinion as to the comparative merits of the machinery used by the Government and Harvey & Livesey?

(Objected to as being incompetent and heresay evidence.)

Ans. I did. I heard Mr. Warner and Major Stickney both say that the derricks used by the Government was not as good as the travelers used by complainants. I mean that the Government used derricks and the complainants used travelers for the same work. There were about double the number of men at work on the pier when I worked for the Government than when I worked for complainants. We did not do any more work—that is, the number of men working for the Government, though double the number, did no more work than those working for complainants of the same kind of work—the cause, it took a great many more men to work the machinery, and they couldn't handle the stone so fast. I worked for the Government until they stopped, about the 10th of December. We had good weather, splendid weather; no rise of the river all of the time. The masonry of the bridge is not finished; the coping is to be put on the island land abutment; No. 5 pier is to be finished or built; no stone is laid in it as yet. The Davenport land abutment has a part of a course built or laid. In my opinion, there was not enough stone on the island at the time I left work in December to finish the work I have spoken of.

Int. In your opinion, how much more stone is requisite to finish the work spoken of on the island, in addition to what is there, to finish and complete the piers and abutments?

(Objected to as immaterial, and calling for the opinion of the witness, and as being incompetent testimony.)

Ans. I don't think there is more than half enough stone there; that is, to do the work in finishing the masonry and doing the work on the abutment.

Int. Considering the fine weather that continued from the 8th October to 10th December, 1870, is it your opinion that complainants, had they been continuing in the progress of these works, and had been supplied with the requisite stone and material, that they would have completed the masonry of this bridge last year?

(Objected to as incompetent and immaterial, and as calling for the opinion of the witness.)

Ans. I think they would have finished it. I recollect in 1869, when I worked for complainants, that they obtained a spile driver from Quincy that was used as a dredge-boat in getting sand.

Being cross-examined by General J. B. Leake, for the United States, the witness says:

The engine that was used for dredging to get sand out of the river and to hoist the jennies on the travelers over the pier, and was brought there a good long time after I had been to work.

Int. Who did you hear direct that all work on the island about cutting stone and otherwise, should stop when the Government temporarily stopped the work in 1869?

Ans. Mr. Harvey and Major Stickney.

Int. What did you hear Major Stickney say himself when he directed the men to quit work.

Ans. As I said, Mr. Harvey asked if he could not finish up the work commenced? Major Stickney said, "No, stop now."

Int. What did Mr. Harvey say himself about the length of time that you would have to stop?

Ans. Mr. Harvey said he couldn't say himself; may be in a day or two; may be in a week; may be longer, but that he couldn't say definitely anything about it. I staid around about a week, and I saw Mr. Harvey at that time, and he said just as soon as the engineers were ready for us he would set us to work again.

Int. How much stone work that you had cut square before this time was afterwards changed by complainants, and how long did it take to do it?

Ans. Can't answer the question. Mr. Hall, the Government inspector, directed us to cut the stone square.

Int. You have stated that when you went to work at the Iowa-shore abutment there was a delay of five or six days, before commencing to lay stone, caused by Major Stickney not being ready. Do you know, yourself, that that delay was caused by Major Stickney's want of readiness?

Ans. I asked Mr. Warner the reason why we did not go on with the work, and he said Major Stickney was waiting for orders from General Warren. I don't know anything about it myself, except as I was told.

Int. Do you know anything about a delay that was occasioned there by there being a clay seam in the rock, where the foundation was to be put?

Ans. I do not. I did not hear anything about the clay seam.

Int. What were you doing yourself those five or six days of delay, as you call it?

Ans. Well, there was a boat-load of stone there. I changed the batter on them wherever it was needed. I did not spend any time in smoothing the bottom for the foundation in the dam. The reason why I was not cutting stone in the yard, I was told by the contractors to go over to the Davenport abutment, and they never told me to go away, and consequently I staid right there. There was plenty of stone on the island that needed cutting, but we had no place to put it, for the reason that the yard was all piled up with cut stone.

Int. After you had worked one day and one-half the river overflowed the dam at this abutment. What means were taken, if any, to prevent the river from overflowing the dam?

Ans. They kept building the dam higher, putting on hands and building it higher, but they didn't build it fast enough to keep out the water. The dam did not break anywhere, but the water just run over the top.

Int. At the end of the day-and a-half's work, you went back to the island cutting stone. How had room been made at this time to cut stone, when it had been so crowded a day or two before?

Ans. By young men who had no families, that got disgusted at the slowness of the job, and that got no pay, going off; that made room for us who had families.

Int. Did the young fellows who had no families take down the stone piles that was piled up there?

Ans. No.

Int. You have stated that there was a delay of two (2) days for want of cement, when the work was stopped. State particularly when those two days were, and what you know about it, of your own knowledge?

Ans. I couldn't give the date; I think it was in November. I couldn't give the day of the month. I heard Mr. Warner tell Major Stickney there was no cement there, and he said he would send it right over, of my own knowledge. I know I was stopped two days. All hands were stopped for want of cement.

Int. Did you ever lay any stone yourself on these works?

Ans. Yes, sir; I laid stone on the Davenport abutment, No. 1 pier, at the Rock Island land abutment. I was at work on the Davenport abutment when we stopped two days for cement; that was in November, 1869. I was at work at this time under Joe Livesey, who had charge of the masonry at that place; that was the only delay on account of cement.

Int. Was there any lack of stone during the season of 1869, to prevent all the work being done by complainants that could have been done by them?

Ans. Yes, sir; there was. There was a lack of coping stone at the Davenport shore abutment; that is all.

Int. Was the Davenport abutment got ready by Harvey & Livesey for the coping stone when they quit work in 1869?

Ans. It was not. They had not needed any coping for that work when they quit work.

Int. In this stone that was laid aside after it was partially cut by by direction of the inspector, was it not stone that was being specially prepared for the noses of the pier, and was deemed unfit for that particular place, and was therefore laid aside for the time?

Ans. No, sir; it was pitch-faced ashlar.

Int. You have stated that you have noticed in one place on nose of pier No. 4, in the work done by the Government, there were joints and beds from an inch to an inch and a half. Were those measurements actually made?

Ans. Yes, sir; they were. They were measured by Major Stickney, who took his rule and measured it there; who scolded the masons about it.

Int. You have said that you were at work at the upper rest of the draw pier when the rise in the river stopped the work there. Did or did not the water in the coffer-dam prevent your laying the foundation on the river side of that pier?

Ans. No, sir; it did not. It had never been cleaned out. There was some water there, but it could have been bailed out in fifteen or twenty minutes with buckets. It did not leak to amount to anything on the river side.

Int. You have said that you were twenty days and eight hours building No. 1 pier. What do you mean by building, as spoken of, within that time?

Ans. I mean from the time the masons commenced to clean off the bottom until they put on the last piece of coping.

Int. State at what points of the work, and what times, and at each place, there has been actual delay in the laying of stone by complainants for want of coping, when the masons have not been doing some other equally important work.

Ans. On the pivot pier in 1870; don't remember the time. The other masons stopped, and I went on the island and cut the coping. Mr. Harvey took it from the cars and bankered it for me, and I cut it, and then he came with a team and took it right away. It took me one day to cut a piece of stone; the masons were during that time staying on the pier. I don't think there was anything they could have done while waiting; there was two masons and two stonecutters doing nothing, and about eight laborers—twelve men in all. On the land abutment on the island there was delay, when they were waiting for coping; it was in September. They waited until the contract was given up. One mason waited. I don't think he did anything until the Government took the work; he couldn't cut stone; his name was Jones. The masons didn't wait at any other place, not to my knowledge.

Int. When and what part of this work under complainants you worked at night and on Sundays?

Ans. At No. 1 pier. I worked three Sundays that I am positive of—most every night, most of the time I worked there. I mean by

nights, when we worked after working hours. Some nights we worked from seven until nine; some nights, eight; some nights, seven o'clock; never did work all night. I worked one night on upper stream rest; never worked anywhere else; on Sunday I worked until about nine or ten o'clock on the upper rest.

Int. How did it happen that the Government paid you $5 for the same kind of work that you was doing before complainants?

Ans. It was a voluntary act on the part of Major Stickney and Mr. Warner. I had then been working five or ten days for the Government. All the men that were working by the day got higher wages. I suppose it was in this voluntary manner. There must have been forty or fifty men that were working by the day. All the men that were doing work by the foot were taken off and set to work at $4½ to $5 per day.

Int. State what the cause of this change in increasing wages was, if you know of any.

Ans. I don't know of any cause.

Int. Was there any strike among the men, or any demand among them for it?

Ans. There was no strike on the river. Whether the stone cutters struck or not can't say. We merely appointed a committee of five or seven men, and sent them to the Major to see if they were going to have us work eight hours or ten hours; eight hours being Government work. The committee reported to us, eight hours. All time over that he would pay us extra. We worked ten-and-a-half hours a day. When I say a day's work, I mean eight hours. It was ten hours to the day under the complainants.

Int. When the men worked upon that stone which was rejected, about which you have testified, did the contractors lose the work, or did they get their pay for it?

Ans I got paid for mine. Those that cut by the foot were not paid for it. Those working by the day got their pay. I don't know of any that were working by the day but myself. I never had anything to do with the dredge that was digging sand; they used an engine with it; it had a shovel.

Int. Have you any promise, or expectation, or hope of reward from Harvey & Livesey, or either of them, in case they are successful in this suit?

Ans. I have not.

Examination-in-chief resumed by F. H. Harvey, Esq., for the claimants:

Int. You have been questioned about coping stone. Had there been sufficient coping stone supplied by the Government during the time complainants had charge of the works, could they not have completed the land abutment on the island sides of the river some time before they were stopped in their work on the 8th day of October?

(Objected to as being incompetent, and calling for the opinion of the witness.)

Ans. Yes, sir; they could.

Int. If there had been coping stone supplied as before mentioned, and the abutment on the island side located earlier, could not the masons in the employ of complainants have gone to work and built this abutment at a time or times when the water was too high to permit to work in the river?

(Objected to as being incompetent, and as calling for the opinion of the witness.)

Ans. Yes; they could have done it.

Re-cross examination by Gen. J. B. Leake for the United States:

Int. Do you know where the abutment on the island side was located, or whether any delay in the location interfered in any way with complainants' work?

Ans. I saw Mr. Scott, with his instruments there, with a man driving some stakes. This was some time after we left the upper rest pier. It was probably located in the last of September, as near as I can recollect. I do not know that the new location, or that the delay of the location of this abutment delayed complainants in their work.

Int. Was not the general character of the masonry work done by the Government as good as that done by complainants?

Ans. In my judgment, it was not.

Second general interrogatory by the Commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

WILLIAM HARRIS.

Sworn to and subscribed before me, this 1st day of February, A. D. 1871.

JAMES THORINGTON,

U. S. Commissioner for District of Iowa, and ex-officio Commissioner of the Court of Claims.

And the further taking of testimony is adjourned until the 4th February, 1871.

JAMES THORINGTON, *Commissioner.*

Deposition of H. Price, for claimants, taken at Davenport, Iowa, February 4th, 1871.

The taking of testimony resumed February 4th, 1871.

JAMES THORINGTON, *Commissioner.*

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. My name is Hiram Price, my present business or occupation is that of President of the Davenport and St. Paul Railroad Company; aged 57 years; place of residence Davenport, Iowa. I have no interest, direct or indirect, in the claim referred to; and no relation to either of the claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

I addressed a letter about the month of April last to the Secretary of War. I have here what I believe to be a copy of that letter. I received a letter during the same month of April from Harvey & Livesey, the contractors of the bridge, upon the subject and progress of the work.

(Answer objected to as immaterial.)

I forwarded such letter to the Secretary of War at the same time I addressed my letter to him. The copy of such letter to him now produced by me, bearing date the 26th April, 1870, and marked "Exhibit A," by the Commissioner, and signed by me, I wish attached to this my deposition. I went on the works of the Rock Island bridge some time last fall; don't remember the exact time. The letter I received from the contractors, to which I previously alluded, refers to the location of the land abutments of this bridge. When I visited the works in the fall the land abutments of this bridge was partly finished, but no work was then being done on either abutment. I was told and believed that the Government had charge of the works.

Int. At your visit on the works when in charge of the Government, did you form any opinion; if so, what opinion, as to whether the works was then being carried on in an economical manner or not?

(Objected as being incompetent.)

Ans. My opinion was at that time that there was more men employed than economy required, or that could word to advantage.

Being cross-examined by General J. B. Leake for the United States, the witness says:

Int. State, if you can, on what day you visited the works at this time; whether you visited them more than once about this time; and how long a time, at any one time, you were actually on the work? State, also, which part of the work you were actually on?

Ans. Cannot fix the day dfinitely; only made one visit specially for the purpose of examining the work; about three hours I was on

the works at this time, I think; was on the island at the abutment, and on the pier at which they were at work in the river. We passed the other works in a boat, but had my attention called to them by Mr. Harvey, and probably others, in passing them. I saw all the works, all the piers, and all the abutments that was going on at the time in the river and on the land, but did not go on to any except the one in the river and one on the land; and I mean the three hours I spent is all the time I spent in seeing them all.

Int. State particularly why you think more men were employed than economy required, or that could work to advantage—giving items?

Ans. Because, as near as I could judge, men appeared to be standing in each others way; and, in some instances, one third more men in a given place than seemed to be necessary to perform the work they were doing. This applies more particularly to the laborers, and where I noticed this more particularly was not at the pier where we stopped at but at a pier nearer the island shore, and in full view of the position I occupied on the island pier. The men appeared to be repairing a coffer-dam at the place where I noticed particularly; they were overcrowded. I think my visit was a few days, probably five or six, after I understood the Government took possession of the work. I saw a great many large stone that I was told and believe had been hauled by teams after the Government took charge of the work from the traveler, which, in my judgment, was a useless expense.

(All of the above answer which witness says he was told, objected to as hearsay, and moves to be stricken out.)

Int. State anything else which you know yourself, and which made you think the work was not being economically carried on?

Ans. Nothing except what I have already stated, and the general appearance of things the time that I was there.

Int. State on what pier you stopped on in the river, at that visit, and how far work had progressed at that place at that time?

Ans. I believe it was pier No. 2. In my judgment it was nearly ready to commence laying stone.

Int. State during how much of your lifetime you have been engaged either in doing work of this kind in water yourself, or in directing or superintending such work to be done by others, or what connection of any kind you have had with such work?

Ans. Never have built any stone work in water, nor superintended any; have superintended and paid for some considerable stone work on land, and have only a general knowledge of that kind of work.

Int. Was the most of the stone work you have superintended and paid for on land put in cellars and fences, or other dry work of that kind?

Ans. Some cellar walls, some stone walls; all laid in mortar or cement.

Int. How many coffer-dams of that kind do you think you have

seen built before you have seen these that were built in connection with this work?

Ans. I have seen probably twenty or thirty coffer-dams while they were building, or immediately after they were built. I never had any connection with the building of any myself.

Int. State whether, on the occasion of this visit, you had any conversation or consultation in reference to the progress of the work with any of the officers having charge thereof on behalf of the Government, or whether most of the statements you heard made were made by the contractors, or those apparently in their interest. State also at whose invitation or at whose request, if anybody's, you made this visit.

Ans. At the time of my visit to the work already referred to, I had no conversation that I now remember with any of the officers of the Government in charge of the work. The most of the statements I heard were made by the contractors. I visited the work with several other gentlemen from Davenport at the request of Mr. Harvey, one of the contractors.

Int. Have you any expectation or hope of reward, compensation, or benefit of any kind from the claimants, or either of them, in case they are successful in this suit?

Ans. None of any kind whatever.

Second general interrogatory by the Commissioner:

Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I know nothing.

H. PRICE.

Sworn to and subscribed before me, this 4th day of February, A. D. 1871.

JAMES THORINGTON,
U. S. Commissioner for the District of Iowa, and ex-officio Commissioner for the Court of Claims.

[NOTE BY CLERK:—The letter of Hon. Hiram Price to the Secretary of War (Exhibit A) is omitted here, as per stipulation of counsel of June 8, 1878.

JOHN RANDOLPH,
Asst. Clk., C. of C.]

Deposition of Washington G. Robeson, for Claimants, taken at Davenport, Iowa, on the 4th day of February, 1871.

WASHINGTON G. ROBESON, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner:

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or in-

direct, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. My name is Washington G. Robeson; my occupation is that of a builder; my age is 36 years; my place of residence, Davenport, Iowa; I have no interest of any kind in the claim referred to; and am of no relation to either of the parties claimants to this suit.

Int. Did you at any time in the month of October, 1870, visit the works of the Rock Island bridge?

Ans. I did.

Int. Do you consider that in the construction of masonry work in the river, like the current that is in the Mississippi river, that there is a great amount of extra risk; and if so, what amount of extra risk and the nature of such risk in carrying on such work, compared with the carrying on of such work on dry land?

(Objected to as both incompetent and immaterial.)

Ans. I do consider that there is a great amount of extra risk, and I consider it would be over double in carrying on such work as there is on land. The nature of such risks are rafts and boats running into your work, rise in the river, and storms; the risk of a coffer-dam bursting in on you; the risk of sinking your boats, or anything of that kind.

Int. Do you consider that where a contractor proposes in writing to build the masonry of piers and abutments, such words can include or can possibly be construed to include, by practical builders or men conversant with the business of building masonry, the building or constructing of coffer-dams and protections?

(Objected to as immaterial and incompetent, as attempting to explain a written contract made subsequent to the proposal.)

Ans. I think not.

Int. Look at the contract now before you, which is the duplicate contract entered into by Harvey & Livesey with the United States, and dated 1st June, 1869, and in which Harvey & Livesey contract and engage with the United States to construct the "piers and abutments" for the new rail and wagon-bridge, and tell me whether such words could possibly include, or be construed to include, by practical masons and builders, the construction of coffer-dams and their protections?

(Objected to as immaterial and incompetent, as construing by oral evidence a written contract.)

Ans. No; there is nothing there that I can see that would oblige the contractors to build the coffer-dams and their protections.

Int. Look at that contract again, wherein the prices per yard to be paid for the work to be executed by the said Harvey & Livesey under such contract are stated to be at the rate of $13 per cubic yard for all masonry in the draw-pier of said bridge, and at the rate of $11 per cubic yard for all other masonry, and tell me whether or not such prices are ordinary and reasonable prices for building the masonry-

work alone of such bridge without building or constructing the coffer dams and protections?

(Objected to as incompetent and immaterial.)

Ans. I don't think it any out of the way; I think it a fair price.

Int. In the construction of piers or abutments, where the length of them is nearly the same but the width reduced—that is, where there is a reduction in the work, the reduction being caused by reducing the width of the piers at the base from 14 feet to 10 feet, and where the contractors are not to furnish any material, would there be any difference; and, if so, what difference to the contractors who did the work?

(Objected to as being incompetent and immaterial.)

Ans. The only difference in building a pier 14 feet or 10 feet wide would be what it would cost to cut the stone at the head and foot of the pier, and what it would cost to take in the extra stone to the pier. After the stone is in there I would just as soon build the pier 14 feet wide as 10 feet wide; because, in backing the pier 10 feet wide, you would have to break stone; where the pier was 14 feet wide, you could work in the stone whole without breaking.

Int. Then, in your judgment, such a reduction of the work would be nearly all lost to the contractors?

Ans. Yes; it would take the cream right out of the job, when you take out the heart of the pier.

Int. At your visit to the works, of which you have spoken, did you see the island shore abutment; if so, tell me what progress had been made in the masonry of that abutment?

Ans. I saw that abutment; it was all up except the coping they had racked back so that it could be put on afterwards. I asked Mr. Harvey why he racked back that way? (Conversation with Mr. H. objected to.) He said he didn't have the coping.

Int. In your judgment would it have been any extra cost to the contractors to have put on this coping, had it been ready; and, if so, how much?

(Objected to as incompetent and immaterial.)

Ans. That coping wings of the abutment wouldn't have cost any more to have put it on at the time the other masons were putting up the other stone work, because they would not have been so particular in cutting them to a size. On the top of the abutment it would not have made so much difference, only if they had the coping they could have finished the abutment, and have taken away their machinery and have used it somewhere else.

Being cross-examined by General J. B. Leake, for the United States, the witness says:

Int. You have enumerated at some length the extra risks a contractor of this sort of work has in the doing of it over a contractor for work on land; are not all of those risks just such as should be taken into consideration when a bid for the work is made, and should be provided for in the bid?

Ans. Yes, it should.

Int. You say you are a builder; what part of the work of building has been your special business?

Ans. I first learned stone masonry; I went to stone mason work when I was about 14 years old; I worked between two and three years at it; since that time I have been specially engaged in brick masonry.

Int. Have you ever done any stone masonry, or been concerned in any to be done, which was to be built in water?

Ans. I have not in river, but I have laid in water, where water came into cellars.

Int. Have you ever had any occasion in your work to build, sink, or fill coffer-dams?

Ans. No; I have not.

Int. Have you ever been concerned, directly or indirectly, or have you in any way had any experience in work of the kind contemplated in the contract of the complainants with the United States?

Ans. No; I have not.

Int. You have expressed an opinion as to the construction of this contract. I ask you, where the language is, "the United States to furnish stone, cement, sand, and all necessary templets required for the work, and nothing more," how much more would you reasonably expect the United States to furnish than stone, cement, sand, and all necessary templets?

Ans. I would expect the United States to get the work ready for me.

Int. In your judgment, would that be furnishing anything more than stone, cement, sand, &c., as above, or would it not?

Ans. I don't think it is.

Int. In your judgment, is the building of coffer-dams putting them in, filling and pumping, anything more than furnishing stone, sand, &c., as above, or is it not?

Ans. Of course, in one sense, it is more, and in another it is not.

Int. Explain in what sense of the word it is not something more?

Ans. If I bid on a job of that kind, I would bid so much per yard for solid masonry, so much for coffer-dams and excavation.

Int. I asked you nothing about bids. I ask you again to explain in what sense of the word a coffer-dam is not something more than stone, sand, &c., as above?

Ans. A coffer-dam is something more, of course.

Int. Have you any expectation or hope of reward, compensation, or benefit of any kind from these claimants, or either of them, in case they are successful in this suit?

Ans. I have not.

Re-examination in chief resumed:

Int. Read the contract all through, and tell me whether you find any words therein having reference to the construction or building of

coffer-dams, and whether under that contract a contractor would be expected to build the coffer-dams required in connection with the erection of the solid masonry of this bridge?

(Objected to as being incompetent. Contract as in writing.)

Ans. I have read the contract. I do not find any words therein in reference to the building or constructing of coffer-dams. I think he would not.

Int. Has coffer-dams any thing to do with solid masonry?

Ans. I think not.

Int. In the contract it states that the masonry shall be paid for by the cubic yard of masonry, Government to furnish stone, sand cement, &c., and nothing more. In your judgment, do the words "nothing more" mean or imply no more material that would be required in building the solid masonry of the piers of an abutment, or do they include the building of the coffer-dams?

(Objected to as incompetent. Contract itself the best evidence.)

Int. Well, from the reading of the contract, I do not see that the words "nothing more" could include the coffer-dams?

Second general interrogatory by the Commissioner:

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I heard Mr. Price's testimony to day before you, and I corroborate the same. I was one of the number that accompanied him at the time of his visit on the works.

W. G. ROBESON,

Sworn to and subscribed before me this 4th day of February, A. D. 1871.

JAMES THORINGTON, *Commissioner.*

And the further taking of testimony adjourned until the 6th February, 1871, at 9 o'clock, a. m.

February 6th, 1871.—The taking of testimony resumed at 9 o'clock, a. m.

JAMES THORINGTON, *Commissioner.*

Further deposition of William Harris, for Claimants, taken at Davenport, Iowa, February 6, 1871.

WILLIAM HARRIS, being recalled, and having been duly sworn, deposes further and says:

First general interrogatory by the Commissioner:

Please to state you name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants.

Ans. My name, William Harris; occupation, stone-cutter and mason; my place of residence, Davenport, Iowa; I have no interest, direct or indirect, in the subject of inquiry; and I am of no relation to either of the claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. Did you work for Harvey & Livesey in the construction of the Rock Island bridge, up the time the Government took charge?

Ans. I did.

Int. Please state the position of the work at that time, of the several piers and abutments.

Ans. The Iowa land abutment, the foundation, was laid up, and one course of cut stone laid on it, with the exception of two little stones. The Iowa shore abutment was finished. Pier No. 1 was finished. Pier No. 2, the coffer-dam was built, pumped out—the traveler was up, and the jenny was ready for hoisting the stone, and a boat load of stone was there. Pier No. 3, nothing had been done. Pier No. 4, the dam was built ready for pumping out, with one side of the traveler frame up. Pier No. 5—couldn't state anything further than that the cribs were put in and the break-water on it. The pivot pier was complete. The lower rest was complete. The upper rest, some stone was laid in it, and part of the dam was built; one course of stone was laid half around, and about one-quarter of another course. The island shore abutment was complete. The island land abutment was complete, all except the coping; that is, as it could be completed for the want of coping.

Int. Are the plans produced by you correct representations of the state of the work you have just described?

Ans. Of the masonry part of the work they are: the break-waters of pier No. 1 are finished but not in the plan. No. 2 and 4, and the upper rests, are completed but omitted in the plan. In every other respect I believe the plan to be a correct representation of the state of the work of the bridge at the time the Government took charge of the work, and such plan marked Exhibit "B," "C," and "D," as signed by me and the commissioner, I wish to be attached to this my deposition; and such plans marked "Exhibit B," "Exhibit C," and "Exhibit D," and attached to my deposition, I wish to form a part of this my deposition. What I mean is, that there are three cribs instead of two (2) cribs, as shown on the plans, and planked across from crib to crib to complete the break-water.

Int. Do you mean to include the preparation of stone for the masonry to pier No. 2 and No. 4, the upper rest and No. 3 pier, and No. 5, as delineated on the plan?

Ans. I do not include that; the masonry was not done in those piers.

Int. Did you put on the noses or cut-waters of the piers that are finished up to the present time, the iron for the protection of the same

Ans. Yes, sir.

Int. Could you have done so without the coffer-dams being there to keep the water out?

Ans. No, sir; I could not.

Being cross-examined by Gen. J. B. Leake, for the United States, the witness says:

Int. Was one course on the Iowa land abutment finished except two (2) closures when the Government took possession?

Ans. Yes, sir; one course was finished except the two closures; I mean one course of cut stone—the backing was not in.

Int. Is there not some backing to be yet put into the Iowa shore abutment?

Ans. Mr. Warner and Mr. Scott told me that that was finished.

Int. Do you know, of your own knowledge, that is, aside from what they told you, that it was or was not finished?

Ans. I know it was finished, because we finished it according to the plan they gave to us. I was working there myself.

Int. Was the bottom of No. 2 prepared so that they were ready to go to work to lay stone?

Ans. The dirt was taken out, but the bottom was not smoothed over.

Int. Did the Government smooth off the bottom of pier No. 2, after they took possession?

Ans. I believe they did a little.

Int. How much of the coffer-dam of the upper rest was not built?

Ans. I believe there was about half of it, or nearly so.

Int. You have stated that the plans now produced by you, &c., are substantially correct. Where did you get those plans to produce here?

Ans. I got them setting back there in the office. Mr. Harvey told me I could take them.

Int. Who prepared those plans?

Ans. I don't know.

Int. When did you first see them, and in whose possession were they then?

Ans. Last Saturday morning; since my previous testimony in this case. They were then in Mr. Livesey's possession. I took them up home with me Saturday evening and brought them here this morning.

Int. Do you understand accurately all the matters that are intended or are represented on those plans, and are those matters all within your personal knowledge; that is, without being told or informed by other persons in reference to them?

Ans. I do. Yes, sir.

Int. Do you know, of your own knowledge, that the condition of the entire work in all its departments, as represented upon those plans by figures, lines, and colors, was, on the day the Government took possession, exactly as the figures, lines, and colors upon these plans represented to be?

Ans. All except the amount of the stone-work that was cut on the island; I don't know what amount of stone that was there; and except what I said about the cribs.

Int. Previous to the Government taking possession, at which had you worked the greater portion of the time, cutting stone or laying stone?

Ans. I had worked most of the time laying stone on the piers; sometimes a little trimming had to be done that comes in mason-work, and then I would go on laying stone. In laying stone, I was also a stone setter.

Ans. At what particular work was you engaged at the time the Government took possession?

Ans. At the time I was ordered to stop I was cutting one of those closures spoken of, and was at work on this side at the Iowa land abutment, and had been at work there about one day, and had previously been at work two days in the yard on the island, and just before that I had been at work on the island land abutment. Immediately after the Government took possession I went to work in the yard again.

Int. At the time the Government took possession, did you, either of your own motion or at the request of any body else, make an inspection of the condition of the work at that time?

Ans. I visited the work that day all round in the river. It was on Saturday morning we stopped, and I laid off until monday morning; I was there pretty much all day. I did this of my own motion.

Int. As you worked immediately preceding this time and immediately after this time in the yard, how does it happen that you do not know as well the condition of the stone in the yard as of the stone in the river?

Ans. Well, there was a tremendous pile of stone cut in the yard, but I cannot estimate the quantity in the yard—no man could without measuring them.

Int. Did you ever have charge of any of the mason work done in the river?

Ans. No, sir; I didn't.

Int. Did you ever have any plan given to you to work by?

Ans. No, sir.

Int. Have you any expectation or the hope of reward, compensation, or benefit from these claimants, or either of them, in the event of their being successful in this suit?

Ans. I have none.

Second general interrogatory by the Commissioner:

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

WILLIAM HARRIS.

Sworn to and subscribed before me this 6th day of February, A. D. 1871.

JAMES THORINGTON,
U. S. Commissioner for the District of Iowa, and ex-officio Commissioner of the Court of Claims.

Deposition of Harvey Tracey, for Claimants, taken at Davenport, Iowa, on the 6th day of February, 1871.

HARVEY TRACEY, being duly sworn, deposes and says:

First general interrogatory by the Commissioner:

Int. Please state your name, your occupation, your age, your place of residence the past year; whether you have any interest in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. Harvey S. Tracey; my occupation is that of a laboring man; my age, 30 years old last December: my residence, Hampton, Rock Island county, Illinois; I have no interest in the subject of inquiry.

Being interrogated by F. H. Harvey, Esq., for the claimants, the witness says:

Int. When were you first employed by Harvey & Livesey, and the nature of such work?

Ans. I commenced on the 16th day of August, 1870. I was foreman building coffer dams.

Int. How many coffer dams did you so build?

Ans. I built two and commenced the third one. I built No. 2 and No. 4 dams. No. 2 and No. 4 was built complete, as far as any wood work was to be done there on the dam; and was at work at the upper rest of the draw pier, and built one side—the side towards the island. I don't think we had quite half of the work of this dam done. I also commenced work on the dam of No. 5 pier; we had over half of that done when the timbers broke in the bottom. Messrs. Harvey & Livesey came and looked at the work, and said we would leave that and go to another dam for the present. The dam at No. 5 staid there until it was washed away by the rise in the river; it was about half done before the timbers broke.

Int. When the Government took charge of the works, on the 8th of October, 1870, what was the position of the work, so far as regarded coffer-dam building?

Ans. The dams were all completed but No. 3, No. 5, and what we lacked of having in of the upper rest.

Int. Considering the fine weather and low stage of water that had continued without any rise in the river from the 8th of October, 1870, to the 13th December, 1870, during which time the Government had charge of the works, tell me how long it would have

taken you, in your judgment, to have built and completed the dams you had spoken of, if you had been allowed to have continued the work?

(Objected to as incompetent.)

Ans. I think I could have completed them in twenty days. I mean in twenty days from the 8th October, 1870.

Int. How near together did you put iron rods in the frames in the construction of the dams you built?

Ans. No. 4 dam there was two feet and ten inches. The dam on the upper rest was the same. No. 2 dam I do not recollect what they were.

Int. The original plan for this bridge contemplated five small piers, a draw pier, the Iowa shore abutment, and the island abutment. In your judgment, is the work which has been done by Harvey & Livesey in connection with the coffer-dams of pier No. 1, No. 2, and No. 4, the pivot pier, the lower rest, the upper rest, island shore abutment, Iowa shore abutment, and the stone cribs of No. 5 pier equal in amount of labor and materials to the labor and materials which would have been required in the construction and the completion of the dams for the five small piers, the draw pier, Iowa shore abutment, and the island abutment had the original plan for this bridge been adopted; and if not equal in amount of labor and material, state to me what difference, in your judgment, there would be?

(Objected to as incompetent and immaterial.)

Ans. I couldn't answer that question. I don't know.

Int. During the time you worked for Harvey & Livesey, did you see any unnecessary delay on their part in the prosecution of the work connected with the building of this bridge; or, in your opinion, did they do all that men could do to forward the work to completion?

(Objected to as incompetent, as calling for the opinion of the witness.)

Ans. I think they done all that men could do.

Int. Did the contractors take all the precautions which appeared to be requisite and necessary to protect the works connected with the building of the coffer-dams from damage by boats, rafts, and other obstacles in the river?

(Objected to as immaterial and incompetent.)

Ans. Yes, sir; I think they did.

Being cross-examined, by General J. B. Leake, for the United States, the witness says:

Int. How long had you worked at the building of coffer-dams before you did this work for Harvey & Livesey?

Ans. Part of two seasons in the Mississippi river.

Int. Explain what you mean as to when a coffer-dam is built or complete, as in your answers above?

Ans. When the wood work is done and filled with earth, or whatever material it may be filled with, but not pumped out.

Int. May or not a dam which appears to be complete be found to be very imperfect upon pumping out of the water?

Ans. It may—it might prove to be entirely worthless.

Int. In your judgment, should or should not Harvey & Livesey have taken immediate care of dam No. 5 when the timber broke, and not left it to take care of itself and gone to other work?

Ans. My judgment was, that I don't think they could have done anything with it.

Int. You have said that the dam was afterwards washed away with the rise. Could they, and ought they not to, have saved the material by taking it out, if they could not do anything else with it?

Ans. They did try to save the material, and did save some of it.

Int. Did they commence to take out such of the material as they did save, by taking out, or did they wait until the rise did actually come?

Ans. I couldn't say positively whether they commenced before the rise or not.

Int. What was there to prevent them from getting it all out if they had commenced immediately?

Ans. I don't know.

Int. Was or was not the break-water or bulk head between the cribs at No. 5, when the Government took possession?

Ans. I don't think it was there.

Int. You have said in your answer-in-chief that when the Government took possession you had built or finished dam No. 2 and 4, and commenced on another dam. State what you had done to the other dam, and where?

Ans. Commenced in the river to build the dam on the upper rest.

Int. Up to what velocity of current in the river can you work with advantage in putting in coffer-dams?

Ans. I couldn't answer that question. My opinion is that you could not work in a very strong current.

Int. How long ought it to take to build and put in the coffer-dams to any one of these piers?

Ans. Well, sir, we put one in in four-and-a-half days from the time we commenced. I think a fair average about eight days to put in a coffer-dam that is the size of the No. 2 and 4.

Int. In what depth of water could you put in these coffer-dams of these piers?

Ans. In twelve or fourteen feet of water.

Int. In how deep water did you work in No. 5?

Ans. We found none less than fourteen feet, and some over; I can't tell now how deep.

Int. Do you know of any reason why the coffer-dams could not have been built as expeditiously by the contractors in 1869 or 1870, before you came to work, as they were built after you took hold of it?

Ans. No, sir; I do not, unless it was that the water was higher in the fore part of the season of 1870.

Int. Did not one of the rises in 1870 take place while you were at work there?

Ans. Yes, sir, there was a rise while I was at work there.

Int. In your judgment, would you regard it as doing all that men could do, when with the season of 1868 and of 1870, up to 16th August, they had not yet built a coffer-dam at pier No. 2, 3, 4, 5, or upper rest of draw pier?

Ans. I couldn't answer that question positively. I didn't know anything about the state of the river, and what they had to work with.

Int. Do you mean then to be understood, as you answered in your examination.in-chief, that these contractors have done all that men could do to finish this work?

Ans. They did whilst I was there; what they did before I don't know anything about.

Int. Have you any promise or expectation, or the hope of reward, compensation, or benefit of any kind from these claimants, in case they are successful in this suit?

Ans. No, sir.

Second general interrogatory by the Commissioner:

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

HARVEY S. TRACEY.

Sworn to and subscribed before me, this 6th day of February, 1871.

JAMES THORINGTON,

U. S. Commissioner for the District of Iowa, and Ex-officio Commissioner for the Court of Claims.

Deposition of William Whitton, for Claimants, taken at Davenport, Iowa, on the 6th day of February, 1871.

WILLIAM WHITTON, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner:

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. My name is William Whitton; my age, 50 years; occupation, stone-cutter; residence, Rock Island, Illinois; I have no interest in this claim, direct or indirect.

Being interrogated by F. H. Harvey, Esq., for the claimants, the witness says:

Int. Were you foreman stonecutter in the employ of the Government on or about the 13th December, 1870, when they ceased work

on this bridge for the season; if so, will you please tell me, as nearly as you can estimate it, the number of yards of stone there was on hand unused at that date?

Ans. I was such foreman. I should think, as nearly as I can estimate, 250 yards; there might be more or less. I don't think—hardly think—they would exceed 300 yards.

Int. Did the stonecutters working for the Government change any of the cut stone which had been cut and left in the yard by Harvey & Livesey; and, if so, how many, as near as you can recollect; and why?

Ans. They did change some of the stone. From the number of men engaged in cutting stone nearly half were engaged in changing stone. Sometimes the number of men varied: sometimes as high as twenty; sometimes as low as eight, who were cutting stone. They had to be changed to make the starlings or nose-pieces out of stone that had been cut for common ashler before.

Int. Why was these stones so changed?

Ans. They had to be changed to make certain sizes. There was no other stones suitable at that time that could be cut for the starling and the lower end.

Being cross-examined by Gen. J. B. Leak, for the United States, the witness says:

Int. Were any of these stone that were changed, so changed because they had previously been improperly cut for the starling of the upper rest, or for any other part of the work, and were unsuitable for which they had been cut?

Ans. Well, there were some few, very little of the noses that needed some trimming.

Int. Have you any expectation, promise, or hope of reward, compensation, or benefit of any kind from these claimants in case they are successful in this suit?

Ans. No, sir.

Second general interrogatory by the commissioner:

Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

WILLIAM WHITTON.

Sworn to and subscribed before me this 6th day of February, A. D. 1871.

JAMES THORINGTON,
U. S. Commissioner for the District of Iowa, and ex-officio Commissioner for the Court of Claims.

Deposition of William H. Thompson, for claimants, taken at Davenport, Iowa, on the 6th day of February, 1871.

WILLIAM HAMILTON THOMPSON, being duly sworn, deposes and says:

First general interrogatory by the commissioner:

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. My name is William Hamilton Thompson. My occupation, I am moulder of iron and brass. My age, I am in my 56th year. My residence is Rock Island, state of Illinois. I have no interest, either direct or otherwise, which is the subject of inquiry. I am no relation to either of the claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. Have you been employed by Harvey & Livesey during the years 1869 and 1870, from time to time, when requisite, to repair the machinery, tools, boats, &c., used by them in the construction of the bridge from Rock Island to Davenport?

Ans. Yes, sir.

Int. Do you consider from the number of years you have been in the business, as also from your employment by Harvey & Livesey, as aforesaid, that you have a competent knowledge of the value of such machinery, tools, boats, &c?

(Objected to as incompetent and immaterial.)

Ans. Yes, I do.

Int. Have you at the request of Mr. Livesey, made a valuation of all such machinery, tools, boats, &c., and are you prepared to state the several amounts, which, in your judgment, would be required to provide the same, or machinery, tools, boats, &c., of a similar character; and if so, please produce such valuation?

Ans. I have, and now produce such valuation and marked "Exhibit E," and signed by me and the commissioner, and which valuation I request may be attached to and form a part of this my deposition; (which is done.)

Int. Does that valuation include six flat boats belonging to the claimants?

(Objected to as immaterial and incompetent.)

Ans. No.

Int. Have you omitted in such valuation, any other tools, machinery, boats, &c., belonging to the claimants?

Ans. Yes; I could not describe them here. I have omitted enough to load a flat boat.

Int. Read such valuation so made by you and tell me what is the total amount thereof?

Ans. $27,548.60.

Int. You have stated that the amount of such valuation of the several articles so made by you amounts to the sum of $27,548.60. If the claimants were now to realize by sale of such machinery, tools, boats, &c., how much, in your judgment, would they fetch at such sale?

(Objected to as incompetent and immaterial.)

Ans. I should judge that they would have difficulty in realizing one-fourth of the estimated value I have placed upon them.

Int. During the years you have carried on business in Rock Island, have you done any work for the Government; and, if so, what work?

Ans. I have done several jobs of work for the Government. I made all the columns and brackets for the building called the Rock Island arsenal, and I have done several jobs for General Rodman in his department since he has come. I have a contract with the Government at the present time to make a quantity of iron railing for the Rock Island National Cemetery.

Being cross-examined by Gen. J. B. Leake, for the United States, the witness says:

Int. What has been your business heretofore, and how long have you been in such business?

Ans. As a workman in iron and brass, for over forty years, and working at it yet. My whole business life has been engaged in working in iron and brass, and nothing else.

Int. I see you have appraised a steamboat at $5,500. Have you ever made, or bought, or sold a steamboat?

Ans. No.

Int. Have you ever made, bought, or sold a dredging-boat?

Ans. No.

Int. I see an item, tressel-work timber, $7,200. Do you deal in any way, buy or sell, such timber as this?

Ans. Certainly; I buy timber such as what is there, frequently.

Int. Did you measure that timber yourself; if not, who did?

Ans. I did not; the Government officers measured it.

Int. How do you know the Government officers measured it?

Ans. Mr. Livesey told me.

Int. Did Mr. Livesey also tell you that there was 36,000 feet there?

Ans. Yes.

Int. Do not the three items of steamboat, dredge-boat, and tressel-work timber, constitute more than one-half of the whole valuation?

Ans. Yes; it is a little over one-half.

Int. In making this valuation, why did you leave out a whole boat-load of stuff, or why didn't you value all that they had?

Ans. I would have to handle so much that I was glad to quit where I was.

Int. Have you any hope or expectation of reward, compensation,

or benefit of any kind from these claimants, or either of them, in the event of their being successful in this suit?

Ans. No.

Re-examination resumed.

Int. Have you ever been engaged in the construction of the machinery of steamboats, and, if so, how long and where?

(Objected to as incompetent and immaterial.)

Ans. I have been working in that kind of work for the last thirty-four years; Glasgow, Scotland; foreman of Caird's foundery, on the Clyde, and at St. Louis, Mo., as assistant in making machinery for boats running on the Mississippi river.

Int. Have you been employed by Harvey & Lviesey to repair the machinery of this steamboat, and how often?

(Objected to as incompetent)

Ans. Well, I couldn't say how often. I remember once when I did considerable work for the machinery of that boat.

Int. During the time you speak of, did you then form an opinion of the value of the boat?

(Objected to as incompetent and immaterial.)

Ans. Yes.

Second general interrogatory by the Commissioner:

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

WM. H. THOMPSON.

Sworn to and subscribed before me this 6th day of February, A. D. 1871.

JAMES THORINGTON.

U. S. Commissioner for the District of Iowa, and ex-officio Commissioner for the Court of Claims.

(EXHIBIT E.)

Valuation of Tools, Machinery, Boats, &c., &c., the property of Harvey & Livesey.

6 traveling double geared jenneys	each	$175	00	$1,050 00
7 travelers	"	450	00	2,700 00
8 single geared jennys	"	100	00	800 00
3 concrete buckets	"	150	00	450 00
20 crow-bars, 40 lbs. each, 7 cts. per lb				56 00
6 hammers, all steel, 16 each, 60 s				57 60
1 rotary pump, complete				250 00
2 fine pumps				175 00
shafting, couplings, and frames for same, complete				350 00
6 tons of iron chain, 10 cts. pr. lb				1,200 00

4 large blocks iron sheaves, not pairs, with wooden frames	each	75	00	300 00
6 blocks	"	50	00	300 00
24 blocks	"	7	00	168 00
2 hydraulic jacks, not enough	"	100	00	200 00
14 pair of hooks with steel points	"	3	00	42 00
Large lot of rope				300 00
2 2-wheeled trucks with scroll gear	each	150	00	300 00
22 3-in. screws 17 ft. long, with nuts	"	60	00	1,320 00
4 2-wheeled barrows	"	20	50	50 00
48 dirt barrows, $30 per dozen				120 00
48 shovels	each	1	50	72 00
2 wagons	"	90	00	180 00
Lot of hoes and two mortar-beds				25 00
36 feet of saw shafting, 3½ in. diameter, with pulleys and couplings complete, too low				275 00
2 circle saws, 42 inch. diameter				42 00
25 picks	each	2	25	56 00
6 tons of duplicate irons for travelers and jenneys, 7 cts. per lb.				840 00
3 stone jacks	each	100	00	200 00
11 pair iron blocks	"	25	00	275 00
Office furniture				46 00
Carpenters' tools				21 00
3 stone beds for wagons				200 00
2 oxen				230 00
26 rails for city railroad iron	each	8	50	221 00
6 jack screws	"	13	00	78 00
Steamboat				5,500 00
Dredging-boat				1,100 00
Blacksmith's shop tools				300 00
Tressel-work timber, 3,600 feet				7,200 00
Cresting				500 00
				$27,548 60

And numerous other articles not valued.

The taking of testimony adjourned until to-morrow morning, at 9 o'clock.

JAMES THORINGTON, *Commissioner.*

FEBRUARY 7TH, 1871.—The further taking of testimony resumed this morning, at 9 o'clock.

JAMES THORINGTON, *Commissioner.*

Deposition of John Warner, for claimants, taken at Davenport, Iowa, on the 7th day of February, 1871.

JOHN WARNER, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner.

Please to state your name, your occupation, your age, your place of residence the past year; and whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Ans. My name is John Warner; my occupation, contractor for twenty-five or thirty years of my life, at present am a man of leisure; my age, on the 9th August next, 57 years; my residence, Rock Island, Illinois; I have no interest, direct or indirect, in the matter in controversy; I am not related to either of the claimants.

Being interrogated by F. H. Harvey, Esq., for the claimants, the witness says:

Int. In the copy of the advertisemt dated May 12, 1869, now before you, and attached to the duplicate of the contract bearing date the 1st June, 1869, entered into by Harvey & Livesey with the United States, to construct the piers and abutments for the new rail and wagon bridge to be built to connect the island of Rock Island with the city of Davenport, are these words: "Parties making bids will state the price per cubic yard of solid masonry at which they are willing to complete the work, the United States furnishing the stone, cement, and sand, as above stipulated, and nothing more. They will also make a bid stating separately the price per cubic of solid masonry at which they will undertake to build the piers and abutments, the United States furnishing the stone, cement, and sand, as above stated; and the price at which they will agree to put in the necessary coffer dams, with their protections." Read the copy of the proposal now before you, which is the proposal made by Harvey & Livesey in reply to such advertisement, and which is in the following words: "Rock Island, May 25, 1869. We propose to build the masonry of piers and abutments of the Rock Island bridge, as per annexed advertisement. Small piers and abutments, per yard, $11. Draw piers, per yard, $13. HARVEY & LIVESEY, *Madison, Wis*," and tell me whether the construction which, as a practical stone mason and builder, you would put upon such proposal of Harvey & Livesey is that such proposal includes any bid at which they will agree to put in the necessary coffer dams and their protections?

(Objected to as immaterial and incompetent.)

Ans. I should say not.

Int. Do the words in the contract "do hereby contract and engage with the said United States to construct the piers and abutments," in your judgment, include the building and constructing of the coffer dams and their protections?

(Objected to as being incompetent and immaterial.)

Ans. No, sir, it does not mean coffer dams; it has nothing to do with it.

Int. In the contract are these words: "Payments in such funds as the Treasury Department may provide, at the rate of $13 per cubic yard for all masonry in the draw pier, and at the rate of $11 per cubic yard for all other masonry." In your judgment, do these words include, or can they possibly be construed to include, any payment or payments for the building of the necessary coffer dams and their protections?

(Objected to as being incompetent and immaterial.)

Ans. In my judgment it does not include coffer-dams in no case.

Int. Please describe to me the material of which the "masonry of piers and abutments" must necessarily have been made, and also the material of which coffer-dams are made?

(Objected to as immaterial.)

Ans. The masonry of piers and abutments must be made of stone, lime, cement, and sand. The materials of which coffer-dams are made—are built of—timber, plank, earth, clay, or gravel, more or less iron.

Int. Would the prices named in the proposal have been reasonable or adequate for the "solid masonry" if the contractors had the coffer-dams to put in first at their own expense?

(Objected to as being incompetent and immaterial.)

Ans. No, I think the fair price and nothing more, for the masonry alone, without the coffer-dams.

Int. Show the risks run by the contractors; what they are and what it is worth to take such risks; what is the difference between the risks when the masonry of the bridge is built in the Mississippi river at this point, and on dry land?

(Objected to as being incompetent and immaterial.)

Ans. I state the difference is 25 per cent. The price of the masonry covers that risk, which is high water, rafts, boats, and elements.

Int. Did you contract for and build a railroad bridge, the piers and abutments of a railroad bridge, to connect Rock Island and the State of Iowa?

(Objected to as being immaterial.)

Ans. I did in 1854–5.

Int. Under said contract were you paid separate prices for the work, namely, a price for the masonry of the piers and abutments, and a price for the coffer-dams and foundations?

(Objected to as being incompetent and immaterial.)

Ans. I had prices for the different kinds of work. The prices of masonry did not include the prices for the coffer-dams.

Int. Would a man who would agree to build an abutment of masonry in the Mississippi river be expected, or could he be expected, to erect the coffer-dam without being paid therefor separately?

(Objected to as being incompetent and immaterial.)

Ans. I couldn't say what some people would expect. I would say that no contractor would expect to do it.

Int. How much capital, in your judgment, is necessarry to carry on such a contract as the one now in question?

(Objected to as being immaterial.)

Ans. From $15,000 to $25,000. It would be more if they had the getting out of the stone—twice that amount if they had.

Int. Do you mean that amount of capital would be required to carry on the masonry work alone, or does it include the capital that would also be required to build the necessary coffer-dams and their protections?

(Objected to as being immaterial and incompetent.)

Ans. That would depend whether you undertook to put in all the coffer-dams at one time, or whether you had plenty of time to do the work in. It didn't cost me $15,000 at any one time; and that was about the amount of capital I had invested. I had three gangs of quarry men, a steamboat that cost me $4,000, and four flat boats. There is a vast difference between contractors doing work. They might have machinery costing more than mine—I never examined it. Some might have $50,000, while others might have not more than $10,000.

Int. What is the difference, in your opinion, between the prices of machinery and labor in the years 1869–70 and the years of 1854–5, when you built the bridge you referred to?

(Objected to as being incompetent and immaterial.)

Ans. The difference between timber and iron, 54–5 and 69–70, is not much difference about labor; labor is about 70 per cent. higher, 1869-70 than 54-5. I then paid 87½ cents to $1 per day for labor, and now it is $1.75 to $2 per day.

Int. In the construction of piers or abutments, where the length of them is nearly the same, but the width reduced—that is, where there is a reduction in the work, such a reduction being caused by reducing the width of the pier at the base from 14 feet to 10 feet, and a reduction in the draw-pier from 56 feet to 38 feet, and when the contractors are not to furnish any material, would there be any difference; and, if so, what difference to the contractors who did the work?

(Objected to as being immaterial and incompetent.)

Ans. There would be quite a difference—a difference of 25 per cent. or 30 per cent.; there would be nearly the same amount of cut stone to the small piers after they were constructed as there would be in the larger ones. It is in the backing where the contractors make their money; and the same amount of dimension stone in either case, such as corners, noses, and the ice-breaks.

Int. Then, in your judgment, such a reduction of the work as spoken of would be a very considerable loss to the contractors?

(Objected to as being incompetent and immaterial.)

Ans. It would be.

Being cross-examined by General J. B. Leake, for the United States, the witness says:

Int. Upon examining the advertisent made by General Rodman for proposals for bridge-masonry, to which your attention was called by the first question in chief, would you, as contractor, suppose or not, that the first kind of bid asked for implied that the coffer-dams were or were not to be furnished by the party making the bid? Is there any difference except that about the coffer-dam, between the two (2) classes of bids called for?

Ans. I don't consider that the first bid called for would imply that the party making the bid should furnish the coffer-dams. There is no difference between the two classes of bids called for, except that of coffer-dams.

Int. Would you regard the words "nothing more" "and nothing more," at the end of the first kind of bid invited as of no importance?

Ans. I would consider it of some importance.

Int. State what importance or signification those words have, in your judgment.

Ans. As there used, I think one was an invitation for a bid for masonry alone, and the other for coffer-dams, requiring the person bidding to make two separate bids. I do not understand the question any other way.

Int. In the duplicate contract shown you, and the words "the United States to furnish stone, cement, sand, and all necessary templets required for the work, and nothing more," state, in your judgment, under that contract, what, if anything more, the contractors should expect the Government to furnish than stone, cement, sand, and the necessary templets required?

Ans. I should expect the United States to furnish nothing more for the construction of the piers and abutments, which does not include coffer-dams.

Int. The language to which I called your attention is not to furnish for the construction of the piers and abutments, but simply to furnish stone, &c., as above, without saying for what. What more would you expect under that language than what is named in the contract?

Ans. I would expect them to say that the price for the masonry must include the coffer-dams.

Int. Is a coffer-dam anything more than stone, sand, cement, and the necessary templets required for the work?

Ans. Yes, sir.

Int. Are you familiar with the current and other difficulties of building masonry in water in the Mississippi river, between Rock Island and the Iowa shore, at or near where the claimant contracted to build this bridge; and, if so, for what length of time have you been familiar therewith?

Ans. I have been familiar with the current since 1852, and more so since 1854–5.

Int. Have you been engaged any portion of your life in contracting for and building masonry of the kind contracted for between the claimants and the United States; and, if so, for what length of time have you been engaged in such business?

Ans. I have been engaged in contracting for work of this kind, more or less, since the year 1838, in different parts of the country. I built two bridges on the Connecticut river, at one of which there was about the same current that there is here. I built a number of railroad bridges across various streams in Vermont, on the Pittsfield and Adams railroad. I built on the Hudson river, and a bridge on this river, and various others; in all I built several hundred bridges, large and small.

Int. In your judgment, as a man of experience in work of this kind, has this work, from the time this contract was made, June 1st, 1869, up to October 8, 1870, the date when the Government took possession under the contract, been carried on as expeditiously as it should or could have been, when, at the latter date, no masonry whatever had been laid in piers Nos. 2, 3, 4, or 5, and but one and part of another course on half of the foundation of the upper rest of the draw pier, and nothing completed except the two (2) shore abutments, pier No. 1, the pivot and lower rest of the draw, the island land abutment, except the coping, and but one course of cut stone on the foundation of the Iowa land abutment?

Ans. If the right of way had been furnished, it seems to me it could have done in half the time. I mean that the whole work should have been done in one year, working time. I mean, also, that the whole work should have been done in less time than the time they occupied in doing the work they did. I wish to be understood, that if they had the right of way. Contractors cannot go to work until the engineers lay out the work.

Int. In your judgment, in which of the two bridges is there more masonry, the one contemplated in this contract, or in the present railroad bridge, the masonry of which was formerly built by you?

Ans. There is more masonry in the piers and abutments of the old bridge built by me than in the present bridge under construction, but not so much in the draw pier. Taking the whole bridge there is not much odds, taken altogether.

Int. Are the difficulties from the current, or any other difficulties arising from the river, any greater from the point where the present bridge is being constructed than at the point where the old bridge is built?

Ans. There is no difference in my judgment; if there is any difference, it is in favor of the lower bridge.

Int. State the length of time it took you to complete the masonry at the old bridge?

Ans. My contract on all the work was two years. We were lim-

ited in regard to funds, and I was suspended four or five months. I was about fourteen months in constructing those piers and abutments. This does not include the stoppage of four or five months.

Int. In what length of time could you have built it if you had not been hindered for want of funds?

Ans. I could probably have built it in ten months.

Int. In your judgment, was the machinery used by the claimants in the work, under the contract now in question, such as to facilitate the most rapid workmanship?

Ans. The machinery used there would not have answered my purpose. I should probably have hoisted my stone with a steam engine, and have put a derrick instead of using the traveler as they did, and have put up a pier while they were losing time on their framework. That is my judgment; but contractors differ very much about their machinery. Messrs. Harvey & Livesey are the only contractors that I ever see use use that kind of machinery. I never was on their work—I only saw it from a distance. There was one advantage in using that kind of machinery on account of rafts—they had no guys in the river.

Int. In your judgment, has or has not the work upon this bridge been carried on more expeditiously since the Government took possession, on the 8th day October, 1870, than previously?

Ans. It has. I thought it very unwise for the United States to take possession of the work at that period of the season.

Int. Have you any reason to suppose, from anything appearing at that time, that the work would be carried on more expeditiously in the future by the contractors than it had been previously thereto by them?

Ans. I am satisfied that they were getting a large force of men, and making efforts to put on twice the number of men that had been at work. They were waiting for the water to fall. There had been an unusual rise of the river at that season of the year.

Int. Ought they not to have had double the number of men, or whatever number of men they contemplated putting on, all the time prior, or most of the time prior, to that time?

Ans. I think they ought to have doubled the number of men for five or six weeks, in my judgment, than they did; but at the same time they would have been all right if the rise had not have come.

Int. In how much of a rise above low-water mark can the work of that kind be done at that point, and what provision against rises; and to what extent would you make for such work?

Ans. I shouldn't calculate at that season of the year. I shouldn't build a coffer-dam much more than three or four feet above the surface at the time I commenced my coffer-dam. I should expect the water to fall instead of rise. I would make provision for three or four feet of a rise above the surface at the time I commenced my coffer-dam. I wouldn't wait for low water — no contractor would.

Some seasons we do not reach the lowest water. We sometimes commence within six feet of low water. I suppose when they put in some of their coffer-dams they must have been within four or five feet above low water.

Int. Have you any hope, promise, or expectation of reward, compensation, or benefit of any kind of these claimants, in case they are successful in this suit?

Ans. Not a dollar of any kind—not a cent.

Re-examination-in-chief by F. H. Harvey, Esq., for claimants.

Int. Do you recollect the rises in the river in 1869–'70?

Ans. I no not.

Int. Do you recollect a rise in the river during the month of October, 1869, when the Government Moline dam was carried away?

Ans. I do.

Int. Was that an unusual and unexpected rise at that season of the year.

Ans. It was. It was the highest I have seen in that season of of the year since I have been in the country.

Int. In your judgment, for what period of time would that rise delay the contractors in the proper prosecution of the work?

Ans. If I recollect, it would delay them some six weeks or two months.

Int. Do you recollect the rise in the spring of 1870?

Ans. I do. That was the highest water I have seen since I have been in the country.

Int. In your judgment, for what period of time would that rise delay the contractors in the proper prosecution of their work?

Ans. I suppose two months or more. I mean that the contractors would be delayed during the months of April and May and part of June, from putting in coffer dams, in any year, or that year. I couldn't say that it would delay them (this particular rise) not much more, if any, than any other rise in the spring.

Int. Do you recollect the unusual rise for that season of the year which occurred about the last day of August, or the beginning of September, 1870?

(Objected to as leading.)

Ans. It was an unusual rise. I suppose it was in September or October.

Int. In your judgment, for what period of time would that rise delay the contractors in the proper prosecution of the work?

Ans. I think they were delayed about three weeks.

Int. Have you stated that you could have done the work in one-half the time the contractors have taken for that purpose. Do you mean the masonry of the work alone, provided the coffer dams and their protections had been furnished and completed by the Government?

Ans. I didn't understand that I made a statement, "I could have

done the work in half the time." I meant to have been understood that it could have been done in half the time, or one year, if the right of way had been furnished and the work had been properly laid out. It would make no difference whether the Government or the contractor built the coffer dam, if the materials were furnished in time.

Int. If the Government had put in the coffer-dams the first season, and furnished all the materials necessary for building the masonry of the bridge without the terms of the contract, could not the contractors, in your judgment, with the facilities they had, have completed the masonry the first season?

(Objected to as incompetent, and immaterial, and leading, and as supposing an unwarranted construction of the contract.)

Ans. If the United States had the material on the ground on the first day of July, 1869, and the contractors ready to go to work, they would have completed the work, in my judgment, in seven or eight months. It takes the contractors some time to get ready to go to work after taking a contract.

Int. In cross examination you were asked, "is a coffer-dam any thing more than stone, cement, sand, and the necessary templets required for the work," and your answer was, "Yes sir, it is." Has the coffer-dam any thing to do with the construction of masonry?

Ans. It is only in cases where masonry is put into a river—in the water—built in the water.

Int. For what purpose is a coffer-dam built?

Ans. It is put into a river for the purpose of keeping the water out while building a foundation for a pier or an abutment.

Second general interrogatory by the Commissioner:

Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I do not.

J. WARNER.

Sworn to and subscribed before me this 7th day of February, A. D. 1871.

JAMES THORINGTON,
U. S. Commissioner for the District of Iowa, and ex-officio Commissioner for the Court of Claims.

Deposition of Joseph Livesey, for claimants, taken at Madison, Wis., on the 23d of January, 1871.

JOSEPH LIVESEY being duly sworn, deposes as follows, and to the first general interrogatory by the Commissioner gives the following:

Ans. My name is Joseph Livesey; my occupation is that of a mason; I am twenty-four years of age; my place of residence the past

year, in Rock Island, Illinois; I have no interest, direct or indirect, which is the subject of inquiry; I am related to one of the claimants, being the son of James Livesey.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

In the month of June, 1869, I was in the employ of Harvey & Livesey, contractors, at Madison, Wisconsin. They had then recently finished a contract they had with Milwaukie and St. Paul Railway Company. They sent me to Rock Island to work on a contract they had there on the Rock Island bridge. I left Madison the 14th of June, 1869, and arrived at Rock Island the same day. I went to work the next day, on the 15th. There were men at work when I got there unloading stone from the cars; other men employed erecting buildings for blacksmith shops, &c., and in making other preparations. The work of unloading stone continued day after day. As soon as they had sufficient supply of stone several men were employed cutting stone; there were upwards of forty men there. There was no work commenced in the river at that time. The stone continued to arrive by cars daily. From 25 to 50 cars arrived daily, and the men had to unload them as fast as they came. It was found necessary, in consequence of the great quantity of stone arriving, to make arrangements to store the same; and the contractors erected a traveler and derrick, and other preparations to receive and store the stone. I worked there tilll the latter part of July, 1869. The contractors then gave orders to all hands to stop, except such men as had to take care of the tools. We did not know when work would be resumed. At the time we were all stopped there were between 60 and 70 men employed. We resumed work again about the first of September, 1869. We commenced work on the Iowa abutment in the river somewhere about the 1st of September. We found that the work we had done in the cutting of stone had to be altered when we commenced work again, because they wouldn't suit the plans they had got. When the plans were received, the contractors made the necessary preparations to commence work in the river. The first work in the river that I did was in preparing the bottom for the Iowa abutment. The coffer-dam had been built by others. There was a delay of two weeks after the coffer-dam was built, the men all waiting, not knowing whether to go on or what to do. I don't know the cause of the delay any more than what I saw. I saw an inspector probing the bottom of the river. The coffer-dam was then pumped out. The inspector's name was Jacob Warner. There was another man there whose name I don't recollect. The engineer was a man by the name of Weston. At the end of two weeks' delay we got orders to go to work on the same bottom that had been bare for two weeks; they, the inspectors, had done nothing at it only to look at it. We continued work after we commenced, two days, and then a rise in the river occurred. The river was rising when we got orders to go to work. The rise was of such a nature that it overflowed the coffer-dam.

Int. Did the unprecedented rise in the river destroy the Government Moline dam, some three miles above this work, and was that the consequence of the coffer-dam of this work being overflowed?

(Objected to by the counsel for the defendant, as being leading and irrelevant.)

Ans. It was.

Int. If work had been commenced building in the coffer-dam directly after it had been pumped out, would the masonry have been so far advanced before the rise in the river that the building would have been completed above the head of the water?

(Objected to by defendant's counsel as being leading, irrelevant, and illegal.

Ans. It would. This rise continued for some three weeks; and at the end of the three weeks we resumed work and worked till some time in November; I don't recollect when; when we were out of cement, and that stopped us for two days. At the expiration of two days we went on and continued until it got so cold we couldn't work, and the ice in the river stopped our getting any more stone across. All the machinery and boats were packed up and put away in winter quarters. Several times we were out of cement, and sometimes delayed for coping, and suitable stone. We had to get the cement, coping, and stone from the Government, as I understand. I am not supposed to know.

Int. When they commenced work in the spring, were the machinery and boats damaged by the ice gorging; and if so, what damage? State fully.

(Objected to by the defendant's counsel, as being leading and irrelevant.)

Ans. Two boats entirely up, and the other four so damaged that we had to repair them before they could be used—the damage was near a thousand dollars.

Int. Do you mean the thousand dollars to include all the damage done to the boats?

(Objected to by defendant's counsel, as leading and irrelevant.)

Ans. No. I think that not less than fifteen hundred dollars would make it all up. The work did not go right along after we commenced in the spring. We were bothered by the water rising and the location of the piers. We got a location of the Rock Island abutment early in the spring. We got a location of the draw pier about the last of June or the first of July. When we got the location of the draw pier it was commenced at once. Nothing occurred to prevent our working on the pivot or lower rest, but it did on the upper rest. There was another rise.

Int. To what extent did the river rise then?

Objected to by defendant's counsel, as irrelevant.)

Ans. Something over seven feet above what it was at that time.

Int. Did the rise affect the work?

(Objected to as irrelevant and leading, by defendant's counsel.)

Ans. Oh, most certainly. It stopped everything.

Int. Did it do any damage to the draw pier you were working on; and if so, what damage?

(Objected to by the defendant's counsel, as leading and irrelevant.)

Ans. It swept away the dam of the upper rest of the draw pier.

Int. how long did this rise continue?

(Objected to by defendant's counsel, as leading and irrelevant.)

Ans. I think it was over a month.

Int. When the water receded, did you all go on to work again on the pier?

(Objected to as leading and irrelevant by defendant's counsel.)

Ans. Also on that and on many of the other piers. On three of the others. We continued work then till the 8th of October, 1870. Then the Government took the work out of their possession.

Being cross-examined by Lewis, McKenney & Tenney, for the United States, the witness says:

I was employed by Harvey & Livesey, as foreman in erecting piers on mason work, setting stone, &c. I was employed by the day. I was paid at the end of every month for the number of days and parts of days I actually worked. Not all of the men employed by Harvey & Livesey were paid in that way. Not all of the laboring men were so paid. Some were hired for the season. Two young men by the name of Hogan and Moore, from Madison, were hired that way. I know nothing more than they were employed for the season. They were hired by Livesey in June, 1869. They were hired for that season—the rest of that year. When I first went down there, there was ten or fifteen cars of stone that had arrived. I don't see any reason why the work should have been stopped in July. Everything was going on as nice as could be. It was all stopped. Harvey & Livesey stopped all the workmen, except what they had hired for the season. Of course, they had to keep them. All the stone which was cut had to be altered. I know the stone was changed—I changed some of them myself. I know, of my own knowledge, that the plans were changed, and that they were changed by Government. I know that the plans were changed by the Government, because the engineer handed me the plans for certain piers that I was working on after I had commenced working on them. I had never seen any different plans from those that were given by the engineers at that time. I know nothing more than what Harvey & Livesey say as to the time that these last plans were received from Government. The inspector spoken of by me was a Government officer; his name was Jacob Warner. The engineer's name was Weston; I don't remember his first name. There were several other Government officers there: General Warren, Major Stickney, Captain Cotton, another inspector named Charles something. I mean by saying that the inspectors did nothing but look at it, that I suppose that was about what they were hired for. Of my own knowledge, I do not know of any Government officer, during all the time of the work, stopping the work or any of the workmen. I have heard the inspector reject certain stone at the time we were at

work. All of the work was stopped on account of lack of cement. The flats that were destroyed cost between five and six hundred dollars a piece. I don't know who bought them, nor of whom they were bought. I never bought, sold, or owned a flat of that kind. They were second-hand flats, but had not been used before to any extent. I know of men who were lying idle for want of location of pier. All I know about this is from what Harvey & Livesey told me. After Harvey & Livesey told me this, I saw the performance of the engineers locating them. I refer to the draw pier. I saw it located the latter part of June or first of July, year 1870. It was located, I believe, by Scott and Weston, engineers. I saw Government officers resume the work after Harvey & Livesey had quit the work. I was not present when the work was taken out of the hands of Harvey & Livesey. I personally lost pay by reason of the delays above mentioned. Harvey & Livesey did not pay me for any of the time that I lay idle. In case Harvey & Livesey should recover the damages claimed by them, I should recover nothing. It makes no difference to me whatever whether they win the suit or not. I am not in their employ now. I have not been in their employ since they quit work. I have been a mason and at work at the business nine years. During all that time I have earned and received fine pay as a mason. I am now 24 years old.

Second general interrogatory by the Commissioner:

Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I think I have stated all.

Question by defendant's counsel:

Int. Do you claim fees for attendance and travel as a witness in this case?

Ans. Most certainly, I do.

JOSEPH LIVESEY.

Sworn to and subscribed before me this 23d day of January, A. D. 1871.

W. A. P. MORRIS,
U. S. Commissioner and ex-officio Commissioner for the Court of Claims.

Deposition of Wm. A. Wheeler, for Claimants, taken at Madison, Wis., on the 23d of January, 1871.

WILLIAM A. WHEELER, being duly sworn, deposes as follows, and to the first general interrogatory says:

My name is William A. Wheeler; my occupation is engineer, machinest, and mill-wright; I am 56 years old; I have resided all the time at Middleton, in this county, during the past year, except such time as I was at Rock Island, Ill.; I have no interest, direct or indirect, in the claim which is the subject of inquiry; I am not in any way related to either of the claimants.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

I have been machinist, &c., for over thirty years. I think I have a competent knowledge of the value of tools, machinery, and boats employed in the building and constructing of piers. I was employed by Messrs. Harvey & Livesey, at Rock Island, from the last of August to about the 8th of October in 1870. I was employed as engineer and machinist. I had an opportunity during all that time of becoming acquainted with all the tools, machinery, and boats employed on the works. I am prepared to furnish a catalogue of all the tools, machinery, and boats employed by the said Harvey & Livesey in connection with their works at Rock Island that came to my knowledge.

Int. State each item and the valuation thereof.

(Objected to by the counsel for the defendants, as incompetent and immaterial.)

Ans.

Steamboat "Oriel"	$6,000 00
Pump-boat, with engine, boiler, and apparatus	4,000 00
Speed-boat	700 00
6 flat-boats, $500 each	3,000 00
6 travelers and frames, $500 each	3,000 00
Boom derrick	200 00
6 jennies or crabs @ $200, double geared	1,200 00
5 " " @ $50 single "	250 00
Bucket dredge boat, complete	1,000 00
Blacksmith shop and tools, complete, for two fires	400 00
Chains, estimated at 5 tons, @ $200 per ton	1,000 00
2 stone-trucks, @ $150 each	300 00
Traveling frame work on piers No. 2 and 4, and abutments, at Davenport and Rock Island	1,500 00
Frame work for loading, unloading, and storing of them	1,500 00
3 concrete buckets, @ $100 each	300 00
Cable and other ropes, estimated at	1,500 00
3 stone jacks	350 00
6 small jacks, @ $15	90 00
2 hydraulic jacks, @ $150	300 00
Horse-power windlass	150 00
3 stone beds, @ $50 each	150 00
2 pumps, complete, @ $300 each	600 00
Pump, complete	250 00
2 wood pumps, @ $35	70 00

Crowbars, estimated at 20 in number	75 00
5 wagons and ox team	300 00
4 dozen wheelbarrows, number estimated	125 00
4 dozen shovels, " "	60 00
3 dozen picks and handles, number estimated	50 00
6 stone hammers	30 00
Screws, bits, and boring machine	50 00
14 steel drills, number estimated	40 00
22 screws, number estimated, at $50 each	1,100 00
15 iron tackle-blocks, @ $25	375 00
4 very large iron tackle-blocks, @ $100	400 00
14 sets of wood blocks, various sizes, estimated	700 00
6 small crabs or jennies, @ $25 each	150 00
Buggy and harness	150 00
6 anchors, at $15	90 00
Large anchor	50 00
6 floats, @ $50	300 00
4 small trucks, @ $30	120 00
Mortar boxes, hods, and hoes	100 00
4 stone boxes	60 00
6 pair heavy hooks	60 00
Iron for tracks	400 00
5 small boats, $20 each	100 00
12 signal lamps, @ $3	36 00
Sundries, including pails, dippers, iron rollers, iron duplicates, iron for travelers, extra wheels of various kinds for trucks and pullers	500 00
Total	$33,231 00

In my judgment, the parties plaintiff could not provide similar tools, machinery, boats, and other implements for a less sum than I have placed upon them, namely, thirty-three thousand two hundred and thirty-one dollars.

I should think that the boats, after two years service, would depreciate 50 per cent., and that the whole of the articles hereinbefore enumerated would depreciate at least that amount. I have had considerable experience in machinery. I think I never saw machinery better adapted to the work required than the machinery above mentioned. I examined it thoroughly, and the machinery for handling stone was an improvement upon anything I had ever seen. I have known the plaintiffs as contractors some twelve or fifteen years.

Int. Have they had, within your knowledge, several extensive contracts within that time?

(Objected to by defendant's counsel as irrelevant and leading.)

Ans. They have.

Int. From experience with them, do you consider that they have a full and complete knowledge of their business?

(Objected to by defendant's counsel, as irrelevant, immaterial, and leading.)

Ans. I do. I did not notice, and do not know of, any unnecessary delay on the part of the plaintiffs in the prosecution of their work.

Int. Do you believe that if they had not been interfered with and interrupted by the United States Government in the prosecution of their work, they would have carried it on satisfactorily to its completion?

(Objected to by defendant's counsel, as leading and irrelevant.)

Ans. I do believe that they would.

Being cross-examined by Lewis, McKenney & Tenney for the United States, the witness says:

I was particularly engaged at the time I was at Rock Island in getting up a bucket dredge boat. I had previously been engaged on works similar to the work prosecuted there with similar kind of machinery. The prices fixed to the articles enumerated above has reference to the time that I saw said machinery, &c., on the ground. The prices are intended to be what they were worth at the time the articles were bought, except the steamboat which was worth the value I put upon it at the time I was there. I do not know where the contractors procured or obtained the above-mentioned machinery, &c., neither do I know what they paid for it. Some few articles are such that the contractors would naturally have on hand in the prosecution of their usual business. On the eighth day of October, 1870, the steamboat was worth the sum I placed upon it. I cannot tell what the others were worth. They had depreciated considerably through the natural wear and tear. The frame work of the travelers would be worthless unless for fire wood or old lumber. This would be equally true at the completion of the job of work. I think the balance of the articles, aside from the steamboat, would have depreciated by the 7th of October, 1870, at least thirty per cent. The price of the various articles as I have estimated them, taking out the steamboat, would be only twenty-seven thousand two hundred and fifty-one dollars. I do not consider these same articles worth on that date over ten or twelve thousand dollars. For the purpose for which said machinery, &c., were used, I should consider that on the 7th day of October, 1870, all of the articles mentioned by me on my direct examination, including the steamboat, were worth from sixteen to eighteen thousand dollars. I do not consider that the said articles, including the boat, if they had been sold without reference to the uses for which they were obtained, would have sold for more than seven or eight thousand dollars on that day. There was no perceptible difference in the market price of the said articles at the time they were first bought and on the said 7th day of October. The first deduction from thirty-three thousand to sixteen thousand dollars was solely on account of wear and tear of machinery. I am not so well posted, and cannot certainly say how it is, but I suppose there is al-

ways some demand for steamboats, dredge boats, small boats, and flat boats on the river. I have never had any experience on the Mississippi river to know about that. All of the boats except the dredge boat could be used on the river for other purposes, aside from those for which the contractors were using them. I do not know what the contractors did with the above-mentioned property. They were taking care of it when I left. When I went into the employ of the plaintiffs, we made no bargain at all. I examined the machinery above mentioned at first for my own satisfaction, as I always do machinery wherever I may be employed. A shaft was broken in the steamboat while I was there, and Mr. Livesey asked me to go and look at it; and I was on board the boat several times, and examined the engine, boiler, &c. It was a well got up boat and was a complete boat for the purpose. I never examined the hull of the boat below water—I examined all above water. I wouldn't be able to swear that the contractors had every item on the catalogue. I estimated the number of some articles, and they are marked estimated on the list. I cannot say that a buggy and harness were needed. The ox team and wagons were needed, and were used about the work.

I demand witness fees in this case.

To the second general interrogatory by the Commissioner the witness made answer:

I know of no other matter relative to the claim in question, except that I saw the order to stop the work.

WM. A. WHEELER,

Subscribed and sworn to before me this 23d day of January, A. D. 1871.

W. A. P. MORRIS,
U. S. Commsssioner, and Ex-officio Commissioner for the Court of Claims.

Deposition of William Jones, for Claimants, taken at Madison, Wis., on the 23d day of January, 1871.

WM. JONES being duly sworn, deposes as follows:

To the first general interrogatary by the Commissioner, the said witness made the following:

Ans. My name is William Jones; my occupation is that of a stone mason; my age is forty-six years; my residence for the past year has been Westport, in this county, except such time as I was at Rock Island, Illinois; I have no interest in this claim, direct or indirect, now subject of inquiry; I am not related to either of the parties claimant.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

I went to work for Harvey & Livesey at Rock Island, August 9th, 1870. I went to work on what they call the pivot or draw pier. I

worked on that pier thirteen days. I quit work then for the reason that they hadn't got the coping. I mean by that, Mr. Harvey and Livesey did not furnish me the coping. I did not know of my own knowledge why the coping was not furnished.

Int. Did you ascertain from any other source than Harvey and Livesey why the coping did not come forward?

(Objected to by defendant's counsel, as incompetent.)

Ans. I turned around to Harris and said, this is a perfect humbug; I'll bet you a dollar they are trying to keep Harvey & Livesey back on this work. I then went to work on the lower-rest pier. The work was not completed when I went on to the lower-rest pier. I finished the work on that pier.

Int. Where did you go to work then?

(Objected to by defendant's counsel, as immaterial.)

Ans. I went to work on No. 1 pier, being the pier next to the abutment on the Davenport side. I worked on that pier until it was finished.

Int. What was the next work you did?

(Objected to by defendant's counsel, as immaterial.)

Ans. On the upper-rest pier.

Int. How long did you work there?

(Objected to by defendant's counsel, as immaterial.)

Ans. One day and a half.

Int. Why did you quit?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans. Because the next day after was Sunday, and I wouldn't work Sunday; and I know on Sunday that the coffer dam was broken in.

Int. Do you know the cause of the coffer-dam breaking in?

(Objected to by defendant's counsel, as immaterial.)

Ans. Yes, sir; on account of the overflow, or rise of the river.

Int. Did that rise destroy the coffer-dam?

(Objected to by defendant's counsel, as immaterial.)

Ans. Yes, sir.

Int. Do you recollect about the time that rise took place, and how long it continued?

(Objected to by defendant's counsel, as immaterial.)

Ans. It was about the 29th of August, that the rise took place, and continued for eight or ten days.

Int. Did that rise stop all the work on the upper-rest pier?

(Objected to by defendant's counsel, as immaterial.)

Ans. It did. I continued in the employ of the contractors.

Int. What were you doing?

(Objected to by defendant's counsel, as immaterial.)

Ans. I went to stone-cutting.

Int. Did you continue in the employ of the contractors up to the time of the stoppage of the work?

(Objected to by defendant's counsel, as immaterial and leading.)

Ans. I did.

Int. During the time that you were in the employ of the contractors, did they not use all diligence and energy to prosecute the work to its completion?

(Objected to by defendant's counsel, as immaterial and leading.)

Ans. Yes, sir, they did; with the most ambitious, energetic feeling of any contractors I ever worked under.

Int. Did you ever work on the Rock Island abutment?

(Objected to by defendant's counsel, as immaterial.)

Ans. I did on the abutment on the bank.

Int. Could you work on that abutment to its completion or not?

(Objected to by defendant's counsel, as immaterial and leading.)

Ans. I could not.

Int. Why?

(Objected to as immaterial, by defendant's counsel.)

Ans. For lack of stone to complete the job; the contractors had to alter stone cut for other work to get the Rock Island pier up as far as we did get it. I have myself been a contractor for building of an extensive nature; that is, a great many people imagine that I have. I was also foreman for eighteen months on the Roman Catholic church in Buffalo. I am conversant with contracts in writing.

Int. In the contract now shown to you, wherein Messrs. Harvey & Livesey contract "to construct the piers and abutments," do the words imply the masonry of such piers and abutments only, or in your opinion, does it include the building of coffer-dams and protection?

(Objected to by counsel for the defendant, as incompetent, immaterial, leading, &c.)

Ans. No, sir.

Int. You having seen the coffer-dams and protection at Rock Island, what do you consider it worth to build these coffer-dams and protection?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans. As much as they got for the mason work, if not more.

Int. What is your opinion as to the character of the boats, machinery, tools, and implements used by the contractors?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans. They couldn't be excelled.

Int. What did you say to Major Stickney?

(Objected to as immaterial, by defendant's counsel.)

Ans. That he couldn't produce the facilities to go ahead with the work equal to what the contractors had on hand.

Being cross-examined by Lewis, McKenney & Tenney, counsel for the United States, the witness says:

I have had experience before on such a job as the one in question. The experience on a bridge where there were two screw abutments and arch, and seen that coffer-dam burst. I was only nineteen years old at that time. The last large contract I had was building a large

mill at Milton, Canada; for John White, member of Parliament. I came to this State thirteen years ago. When I first came here I was appointed foremen in McNeil's quarry. I was there one winter and part of a summer. I was then made foreman in the same quarry by Parkins. I stopped with Parkins till the war broke out. I went to the war and was there eighteen months. I was placed as State mason, under Dr. Clement, before I went to the war, at $65 per month, wet and dry. Dr. Clement was superintendent of the Insane Hospital. When I came back my place was filled. I haven't been away from the hospital but three and a half years since I came into the State. All the treatment that I had at the hospital was my dinner and my pay. I was never an inmate of the hospital, and under treatment there, for being insane. My work was a great deal of it done inside of the hospital. I built the big chimney there, which they call Jones' monument. I set their boilers and gas retorts, cooking range. They never had any one called a State mason at the hospital but me. I have also worked for Dr. McDill.

I claim witness fees in this case.

To the second general interrogatory by the Commissioner, the said witness says:

That he does not know of any other matter relative to the claim in question.

WILLIAM JONES.

Subscribed and sworn to before me, this 23d day of January, A. D. 1871.

W. A. P. MORRIS,
U. S. Commissioner, and Ex-officio Commissioner for the Court of Claims.

Deposition of Louis N. Bates, for Claimants, taken at Madison, Wis., on the 23d day of January, 1871.

LOUIS N. BATES, being duly sworn, deposes as follows; and to the first general interrogatory by the Commissioner, gave the following:

Ans. My name is Louis N. Bates; my age is 27 years; bookkeeper by occupation; my residence the past year has been Rock Island, Illinois; I have no interest, direct or indirect, in this claim now subject to inquiry. I am not related in any way whatever to either of the claimants.

Being interrogated by F. H. Harvey, counsel for the claimants, the witness says:

I was employed as time-keeper and bookkeeper for the plainiffs in this case, at Rock Island, from October, 1869, till October, 1870, except the winter season, when they did not work.

Int. Do you know, of your own knowledge, that repeated delays occurred, and loss of time of the men employed there, in consequence of the failures of the Government officers to provide the necessary stone and material?

(Objected to by defendant's counsel, as immaterial and leading.)

Ans. I do.

Int. Were they kept idle at various times, and had to convert stone to sizes required by engineers who required stone of certain dimensions, when promiscuous stone would have done?

(Objected to by defendant's counsel, as leading and immaterial?

Ans. They were.

Int. Were these delays and requisitions of great disadvantage to the plaintiffs in the way and manner in which they should and would have carried on the works?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. They were.

Int. Did the plaintiffs, in consequence, direct you to write a letter to the Hon. Hiram Price on the subject of these delays?

(Objected to by defendant's counsel, as immaterial, leading, and incompetent.)

Ans. They did. This now presented to me is a copy of such letter attached to this my deposition, made a part thereof, and marked "Exhibit A."

Int. In the month of May last, did the engineers request the plaintiffs to excavate the rock at the bed of the river, on which to build the foundation of the abutment on the Rock Island side?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. Yes.

Int. Was this considered extra work outside of the contract?

Objected to by defendant's counsel, as incompetent and leading.)

Ans. Yes, sir.

Int. Did the plaintiffs perform such extra work?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. Yes, sir.

Int. Looking at the entry in your account-book, now presented to you, and bank-book, are you able to state that the sum of $1,883 was paid to the contractors on the 17th day of June, 1870, for such extra work?

(Objected to by defendant's counsel, as leading, and immaterial, and incompetent.)

Ans. That the sum of $1,883 was so paid. I recollect the foundations that were dug for land abutments for the Davenport side, and Rock Island side.

Int. Were you requested by the plaintiffs to keep the time of the men employed and the cost of such work separate and distinct?

(Objected to as leading and immaterial, by defendant's counsel.)

Ans. I was.

Int. Why were you requested to keep this time separate and distinct?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans. Because it had nothing to do with the contract.

Ans. Looking at this memorandum book, are you able to state the cost of such extra work, with the value of the tools, wheel-barrows, planks, &c., employed thereon?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans. Yes, sir. The amount of such work, &c., is $430.25.

Int. Do you know, of your own knowledge, that the departments requested plaintiff to do extra work in dressing stone for abutments?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. I do.

Int. What amount per foot did they agree to pay for such extra dressing of stone?

(Objected to by defendant's counsel, as incompetent.)

Ans. Seventy-five cents per foot.

Int. Looking at the account book and the bank book, did the Government, on the 6th day of October, 1870, pay the contractors the sum of $1,169.25 for such extra work?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. They did.

Being cross-examined by defendant's counsel, Lewis, McKenney & Tenney, the witness' answers were as follows:

There were three jobs of extra work. I do not know of my own knowledge whether the Government has paid for all the extra work or not. Major Stickney requested extra work to be done – his name is Amos Stickney. I do not know where he is now, but presume he is at Rock Island. I do not know of any other Government officer than Major Stickney requesting extra work to be done. I could not say positively whether the request made by Major Stickney was made by word of mouth or in writing. I have heard him on the works speaking of the excavations, telling how far they had got to go down. I do not know, to my knowledge, that I have ever heard Major Stickney making request as to extra work.

Re-direct examination by F. H. Harvey, claimant's counsel.

Int. Was the payment of $1,169.25 for extra work done up to the end of the previous month?

(Objected to by defendant's counsel, as being leading and immaterial.)

Ans. As I understood, it was. I expect to be paid as a witness in this case.

To the second general interrogatory by the Commissioner, the witness makes the following:

Ans. Nothing further.

LOUIS N. BATES.

Subscribed and sworn to before me, this 23d day of January, A. D., 1871.

W. A. P. MORRIS,
U. S. Commissioner, and Ex-officio Commissioner for the Court of Claims.

[NOTE BY CLERK:—The letter of contractors to Hon. Hiram Price, marked "Exhibit A," to this deposition is omitted here, as per stipulation of counsel for claimants and defendant, filed June 8, 1878.
JOHN RANDOLPH,
Assistant Clerk, Court of Claims.]

Deposition of Algernon S. Wood, for Claimants, taken at Madison, Wis., on the 24th day of January, 1871.

A. S. WOOD, being duly sworn, deposes as follows, and to the first general interrogatory by the Commissioner, made the following:

Ans. My name is Algernon S. Wood; I am by occupation a mason and stone-cutter; I am fifty-eight years of age; my place of residence for the past year has been Rock Island, Illinois; I have no interest, direct or indirect, in the claim which is the subject of inquiry; I am not related in any degree or manner to the claimants, or either of them.

Being interrogated by F. H. Harvey, for the claimants, witness says:

I was first employed by Harvey & Livesey at Rock Island, June 16, 1870, in the capacity of foreman in the stone-cutters yard. I had employed under me in the neighborhood of fifteen to twenty stone-cutters, and probably thirty men altogether. My duties were to see to receiving stone from those who were furnishing the Government officers and engineers, and directing the manner in which they were to be cut for the piers and abutments. All the stones were cut under the direction of the Government engineers. The engineers were Major Stickney, as chief, Mr. Weston as subordinate, and Mr. Whitting, who was foreman on behalf of the Government. Mr. Whitting was with us every day. Mr. Warner acted in a similar capacity when I first went there, for a few days, till Mr. Whitting came. Major Stickney was in the stone-yard nearly every day, as also Mr. Weston. Mr. Weston furnished me with the plans. Every stone which was cut or dressed under my direction had to be

approved by Mr. Stickney, or one of his subordinates, before the same could be put in one of the piers or abutments being built.

Int. Was there ever any difference of opinion between Mr. Stickney and Mr. Whitting or Weston, his subordinates, as to the manner in which the stone should be cut or dressed?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. There were in some instances.

Int. Go on and describe what they were?

(Objected to by defendant's counsel, as above.)

Ans. In one instance, in reference to the manner in which the stone were to be cut a few courses below the starlings. There were other instances, but in reference to less important work; sometimes in reference to one particular stone. I don't know that I could give any other particular instances. Sometimes, in conversation with Mr. Weston about the work, he would say "that would suit me well enough, but Major Stickney thinks otherwise."

(This last statement in quotation marks, objected to by defendant's counsel, as immaterial, and not responsive to the question.)

I know something about extra work in dressing stone. I obtained my information from Major Stickney and Mr. Weston. Major Stickney spoke to me about dressing stone at the time the mode of dressing stone was decided upon, I think in the latter part of August, 1870.

Int. Did Major Stickney instruct you as to a particular kind of dressing for the abutments, and tell you it was extra work?

(Objected to by defendant's counsel, as being incompetent and leading.)

Ans. I understood from him that it was extra work.

Int. Was there anything said to you by Major Stickney about the Government paying for this extra work; if so, what?

(Objected to by defendant's counsel, as incompetent and leading.)

Ans. Major Stickney, in a conversation we had together about the work, stated that Mr. Harvey charged him seventy-five cents a foot for that extra work, and asked me what there was that should make it cost so much, or words to that effect.

Int. What did you reply?

(Objected to by defendant's counsel, as immaterial.)

Ans. My reply was that I did not think it an extraordinary price for the labor.

Int. Did you get instructions from Major Stickney, or his subordinates, to dress the stone for the coping, and also the noses of the piers below water, and also the coping or corners of the abutments?

(Objected to by defendant's counsel, as incompetent, leading, and multifarious.)

Ans. Yes, sir. From Major Stickney, or Mr. Weston, or Mr. Whitting. There were two abutments unfinished on the 8th of October, 1870. There were four piers unfinished and the upper rest.

Int. Was there stone on the ground furnished you by the Gov-

ernment at that date wherewith any or either of these piers or abutments could be finished?

(Objected to by defendant's counsel, as incompetent and leading.)

Ans. Not according to the directions received from Major Stickney and his subordinates, as to the manner in which the stone were to be cut.

Int. Had the contractors gone as far as they practically could go in the execution of their work upon these several piers and abutments?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. In reference to the abutments: yes. There was not stone on the ground to finish either of the piers in the manner in which we were directed to do the work by the engineer.

Int. Do you know of any delays in the construction of the draw pier for want of stone; and if so, what delays?

(Objected to by defendant's counsel, as leading and incompetent.)

Ans. There was some delay occasioned for want of proper sized pieces for coping. Don't remember that there was any other.

Int. When these delays occurred what did you do?

(Objected to as immaterial, by defendant's counsel.)

Ans. I set the stone-cutters, those that I had charge of, to cutting something else that we would be likely to want for some of the other piers.

Int. Did you complain to Major Stickney, or his subordinates, of these delays?

(Objected to by defendant's counsel, as leading.)

Ans. I did very frequently, to both Major Stickney and his subordinates.

Int. Can you describe the nature of your complaints to them?

(Objected to by defendant's counsel, as immaterial.)

Ans. My complaints to them were for the want of stone for the stone-cutters to cut for the progress of the work.

Int. Did you continue in the employ of the government from the 8th of October, 1870, up to the 10th of December, when the works were stopped on account of the cold, in a similar capacity as foreman of stone-cutters?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. I did, subordinate to Mr. Whitting as principal foreman.

Int. How many cars of stone were received by the Government after the 8th of October.

(Objected to by defendant's counsel, as immaterial.)

Ans. I think there was fifty-four car loads, of about four-and-a-half yards in each car.

Int. Was there, on the 10th of December, 1870, when the work ceased on the part of the Government, sufficient stone and material on the ground to complete these piers and abutments?

(Objected to, as leading and immaterial, by defendant's counsel.)

Ans. There was not.

Int. In your estimation, how much more stone would have been required for that purpose?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans. In the neighborhood of 500 yards.

Int. During the time that you were in the employ of Messrs. Harvey & Livesey, did the engineers, from time to time, reject stone that had been cut and dressed under your superintendence, as unfit and unsuitable for the work?

(Objected to by defendant's counsel, as incompetent, and immaterial, and leading.)

Ans. Yes; but not of any considerable quantity.

Int. Since the Government has had the work under its control, have those rejected stone been used by them?

(Objected to by defendant's counsel, as immaterial and leading.)

Ans. In some instances. I desire to make an explanation: As the stone were delivered from the cars, all those which were considered unfit for cutting were marked with a cross on them, to indicate that they were to be used for backing and not for cut stone. We did use very many of those afterwards for dressed stone.

Int. Did Major Stickney approve of all the work that had been done by Harvey & Livesey in the piers and abutments, up to the 8th day of October, 1870?

(Objected to by defendants' counsel, as incompetent.)

Ans. Yes; because the work was not allowed to progress unless it was approved.

Being cross-examined by Lewis, McKenney & Tenney, counsel for the United States, the witness says:

All those that were preparing stones for the piers and abutments were at work in one yard under me. Some of them were paid by the piece and some by the day. All were so paid either by the piece or by the day so far as I know. None were kept completely idle for lack of stone, but they were put on to other work not then necessary, and some left because they couldn't get stone to cut of a kind wanted. They would frequently hunt an hour for the kind of stone that was necessary to carry on the work. Those men who left were working by the piece. Harvey & Livesey did not, to my knowledge, at any time lack for stone-cutters. I do not remember how long we were delayed for the want of proper sized pieces for coping on the pivot-pier. It was not very long. I never charged my memory with it. For the want of proper sized stone for coping, the Rock Island and Davenport abutments had to be quit entirely, and the stone is not there yet. There are instances in almost any job when occasionally a stone would be rejected. Major Stickney did not state that he would pay Harvey & Livesey seventy five cents per foot for extra work, but he said that he did pay them. What I mean by that is, that he did not inform me of any contract with Harvey &

Livesey farther than that he paid so much per foot for extra work. Major Stickney did tell me that the cutting a margin on the face of the stone of the face work for the abutments was extra work. I recollect of his saying something like this: "Mr. Harvey charges seventy-five cents extra for this work." He inquired of me what there was about it which should make it so expensive. I cannot recollect the words, but he spoke of this as extra work. That is positive, and he said that he had paid for it at seventy-five cents per foot. I think this conversation took place somewhere about the middle of December, 1870. It took place after they had left the work. When I speak of getting instructions from engineers, I mean Major Stickney and Mr. Weston. I cut the stone according to verbal directions from engineers, and plans furnished. I have some of the plans with me. They are in writing, figures and drawings.

I claim witness fees.

To the second general interrogatory by the Commissioner, the witness made:

Ans. Nothing that I know of.

ALGERNON S. WOOD.

Subscribed and sworn to before me this 24th day of January, A. D. 1871:

S. A. P. MORRIS,
U. S. Commissioner, and ex-officio Commissioner for the Court of Claims.

Deposition of George C. Russell, for claimants, taken at Madison, Wis., on the 24th day of January, 1871.

GEORGE C. RUSSELL, being duly sworn, deposes as follows, and to the first general interrogatory by the Commissioner makes the following:

Ans. My name is George C. Russell; my residence for the past year is Madison, Wisconsin; my age is 42 years; I am by occupation claim agent and farmer; I am not in any way interested in the claim now the subject of inquiry; I am not related in any way to either of the claimants.

Being interrogated by F. H. Harvey, of counsel for the claimants, the witness says:

I was employed by Messrs. Harvey & Livesey as book-keeper during the progress of the Rock Island bridge. They received on the 22d day of July, 1869, by mail, a certain notice here presented to me. A copy marked "Exhibit B" is hereto attached, and made a part of this my deposition.

(To which copy, and the introduction and attaching thereof, the defendant's counsel objects.)

Int. Did the contractors, in consequence of such notice, address the letter here presented to you to the Secretary of War?

(Objected to by defendant's counsel, as incompetent.)

Ans. They did; the same is in my handwriting.

Int. Is this now here presented to you and marked "Exhibit C," a copy of the original letter?

(The counsel for the defendant object to the introduction and annexation of said copy, as incompetent.)

Ans. It is; and is hereby offered and annexed, and marked "Exhibit C," and made a part of this my deposition.

Int. Have you been informed, and do you believe that the letter now shown to you, of which this paper-writing marked "Exhibit D" is a copy, was received by contractors in reply to this said communication of the 28th of July, 1869?

(Objected to by defendant's counsel, as incompetent, leading, and illegal.)

Ans. I have been so informed and believe, and the said paper-writing marked "Exhibit D" is hereto attached, and made a part of this my deposition.

(The defendant's counsel objected to the introduction and annexation of said "Exhibit D.")

Int. Did the contractors (Harvey & Livesey) receive the letter here shown to you, of which the paper-writing here produced, and marked "Exhibit E" is a copy?

(Objected to by defendant's counsel, as incompetent and leading.)

Ans. They did; and said "Exhibit E" is hereto attached and made a part of this my deposition.

(To the introduction and annexation of which the defendant's counsel object.)

Int. Have you been informed, and do you believe, that the paper writing here shown you, and of which a copy marked "Exhibit F" is hereto annexed, is a protest dated the 15th day of September, 1869, and forwarded on that day by the contractors to General G. K. Warren, the major in charge of the works on the Rock Island bridge, together with a receipt of General Warren of such protest written thereon?

(Objected to by defendant's counsel, as incompetent, leading, and illegal.)

Ans. I do. And said paper writing marked "Exhibit F" is hereto attached, and made a part of this my deposition.

(To which introduction and annexation the said defendant, by cousel, objects.)

Int. Did you, in the month of October, 1869, by direction of the contractors, forward to the Attorney-General of the United States a letter of which this here presented to you, and marked "Exhibit G," is a copy?

(Objected to by defendant's counsel, as incompetent.)

Ans. I did; and said paper writing marked "Exhibit G" is hereto attached and made a part of my deposition.

(To the introduction and annexation of which "Exhibit G," the defendant's counsel object.)

Int. Is this, now presented to you, of which the copy marked "Exhibit H" is a true copy, and annexed to your deposition, a copy of a letter dated October 6th, 1870, and received by Harvey & Livesey?

(Objected to by defendant's counsel, as incompetent, and leading, and immaterial.)

Ans. It is; and the paper marked "Exhibit H," and hereunto attached, and made a part of my deposition, marked "Exhibit H," is a copy of such letter.

(To the introduction and annexation of which "Exhibit H" the defendant's counsel object.)

Int. Is this now presented to you, of which the copy marked "Exhibit I" is a true copy, and annexed to your deposition, of a letter dated October 6th, 1870, and received by Harvey & Livesey, contractors?

(Objected to by defendant's counsel, as incompetent, leading, and immaterial.)

Ans. It is; and the paper marked "Exhibit I," hereunto attached and marked a part of my deposition, is a true copy of such letter.

(To the introduction and annexation of which, "Exhibit I" is a copy of such letter.)

Int. Is this now presented to you, marked "Exhibit J," and annexed to your deposition, a copy of a letter addressed to Col. Macomb by Harvey & Livesey, dated October 7, 1870?

(Objected to by defendant's counsel, as leading, incompetent, and immaterial.)

Ans. I am so informed, and believe it to be a true copy of such letter; and such copy, marked "Exhibit J," is hereunto attached, and made a part of my deposition.

(To the introduction and annexation whereof the defendant's counsel object.)

Int. Is this now presented to you a copy of a letter received by Harvey & Livesey, dated October 7, 1870, marked "Exhibit K," and to your deposition annexed?

(Objected to by defendant's counsel, as leading, incompetent, and immaterial.)

Ans. It is such copy, and the paper marked "Exhibit K," hereto attached, and made a part of this my deposition, is a true copy of such letter.

(To the introduction and annexation whereof, the defendant's counsel objected.)

Int. Is this now presented to you, marked "Exhibit L," a copy of a letter addressed by Harvey & Livesey to Col. Macomb, dated October 8, 1870?

(Objected to by defendant's counsel, as leading, incompetent, and immaterial.)

Ans. It is; and the paper marked "Exhibit L," and to this my de-

position annexed, and made a part thereof, is a true copy of such letter.

(To the introduction and annexation of which the defendant's counsel object.)

Int. Is this now presented to you, and marked "Exhibit M," a copy of a protest dated October 8, 1870, signed ay Harvey & Livesey, and forwarded to Col. J. N. Macomb, Col. Engineers, U. S. Army, in charge of works on Rock Island bridge, on the 22d of October, 1870?

(Objected to by defendant's counsel, as leading, immaterial, and incompetent.)

Ans. This paper, marked "Exhibit M," is a copy of such protest, as I verily believe, and is hereunto attached, marked "Exhibit M," and made a part of my deposition.

(To the introduction and annexation of which the defendant's counsel object.)

Int. Is this now presented to you a letter received by Messrs. Harvey & Livesey, from J. N. Macomb, dated October 22, 1870, acknowledging the receipt of said protest?

(Objected to by defendant's counsel, as leading, immaterial, and incompetent.)

Ans. It is; and that paper marked "Exhitbit N," is a true copy of such letter, and the said "Exhibit N" is hereto attached, and made a part of this my deposition.

(To the introduction and annexation of which the said defendant's counsel object.)

Int. Looking at the account book and bank books now before you, are you able to state the amount received by the contractors, Harvey & Livesey, from the United States Government on account of their contract?

(Objected to as incompetent.)

Ans. Yes; I have it before me.

Int. Please state the dates and amounts of such payments?

Answer.

1869, September 10th	$2,500	00
" October 8th	7,000	00
" November 30th	5,000	00
1870, June 3d	3,501	64
" July 8th	7,527	86
" August 10th	3,500	00
" August 11th	10,000	00
" August 20th	1,867	25
" September 12th	5,790	97
" October 6th	5,475	73
" October 20th	1,897	97
	$54,061	42

Int. Looking at the account book before you, is this an account of

damages claimed by the contractors; first, on stone; second, damages by loss of time for want of cement; third, damage by reason of suspension of work from July 22d, 1869, to September 4th, 1869; fourth, damage by reason of laying up of steamboat, for want of proper plans and specifications, and also during suspension of work; fifth, cost of re-handling and storing stone by reason of delays by the Government, and amounting altogether to $10,109.61?

(Objected to by defendant's counsel, as leading, immaterial, incompetent, and no foundation laid for the introduction of the testimony.)

Ans. It is such account; and "Exhibit O" hereto annexed and made a part of this my deposition, is a true copy of such account.

(To the introduction and annexation of which "Exhibit O" the defendant's counsel object.)

Int. Have you a competent knowledge of the boats, tools, and machinery used by the contractors, Harvey & Livesey, in the construction of the Rock Island bridge?

(Objected to by counsel for the defendants, as incompetent, and as not showing that he had any knowledge on such subjects.)

Ans I think I have.

Int. Have you made a valuation of such tools, boats, and machinery?

(Objected to for same reason as above.)

Ans. I think I have some of them.

Int. State the articles and the valuation of such tools and machinery?

(Objected to by defendant's counsel, as incompetent and immaterial.)

Ans.

6 Flat boats of the value of $500 each	$3,000 00
6 Travelers " $700 "	4,200 00
6 Jennies " $175 "	1,050 00
5 Jennies, small " $50 "	250 00
Dredge boat and buckets, complete	1,200 00
Blacksmith, two forges and sets of tools	350 00
Big wheel truck	225 00
Small wheel truck	100 00
Lot of chain, estimated value	1,000 00
Frame work on piers and abutments; on piers Nos. 2 and 4, and on the abutment on the island, and abutment on Davenport side	1,400 00
Traveler frame on the island of Rock Island	1,400 00
Iron track for travelers	900 00
3 Iron concrete buckets @ $100 each	300 00
Lot of rope, estimated value	1,200 00
3 Stone jacks @ $125 each	375 00
6 Lifting jacks, or screws, @ $15	90 00
2 Hydraulic jacks @ $150	300 00
Horse-power	150 00
3 Stone beds @ $60	180 00

2 Power pumps, complete, on pump board @ $300	600 00
Rotary pump, with gearing	225 00
A lot of crowbars, from 20 to 30	50 00
2 Wagons and one yoke of oxen	350 00
A lot of wheelbarrows, about four dozen, @ $30 per dozen	120 00
4 dozen shovels @ $12.50 per dozen	50 00
6 Large steel stone hammers @ $4 each	34 00
Lot of saws, belts, boring machines, bits, pails, &c	70 00
Boom derrick	175 00
Large anchor	50 00
6 Small anchors @ $15	90 00
6 Flat boats @ $50	300 00
22 Long wrought-iron screws, 14 to 18 feet long, @ 50	1,100 00
Extra wheels for machinery, and duplicate pieces of iron work of various kinds	400 00
5 Small skiffs @ $20 each	100 00
15 Iron tackle blocks @ $25	375 00
4 large iron tackle blocks @ $100	400 00
A lot of wooden tackle blocks of various sizes	600 00
A lot of steel drills	35 00
Steam pump boat, with engine and boiler complete	4,000 00
Speed boat	700 00
Steamboat "Oriole," with engine, boilers, hose. and appurtenances	6,000 00
3 Mortar boxes @ $10	30 00
Buggy and harness	100 00
Picks and handles, 3 to 4 dozen	50 00
	$33,664 00

(To the introduction and annexation of which "Exhibit O" defendant's counsel object.)

I have known Harvey & Livesey as residents of Madison, and as builders and contractors for fifteen years last past.

Int. Have they the reputation of being prompt and reliable business men in conducting the business and works under their contract?

(Objected to by defendant's counsel, as leading and immaterial.)

Ans. They have.

They were, I believe, loyal to the United States during the late rebellion. Previous to and at the time of executing the contract in question, they were partners in business under the name of Harvey & Livesey. I believe each of them to be a citizen of the United States, and of the State of Wisconsin.

To cross-interrogatories by Lewis, McKenney & Tenney, defendant's counsel, the witness says:

Harvey & Livesey commenced work on the contract about June 6th, 1869. They stopped work on the contract the 7th of October,

1870. I was their book-keeper during the time that they were at work on the contract and had a general knowledge of all their business, not only that, but of all business of every kind they were doing. I acquired such knowledge as such book-keeper from conversations and consultations with them. From the 6th day of June, 1869, to October 7th, 1870, I had an office in Madison. I also was in Rock Island at various times. Part of the time I kept the books here, and part of the time at Rock Island. When I had the books in Madison I made them up from the original entries in their books and from the rolls. The original books were memorandum books, blotters, time books, check books, and pay rolls. The Exhibit marked "O" is a transcript from the book containing transcripts from the time books, pass books, and memorandum books used about the works in keeping account of the work done by employees. The entries were first made in temporary memorandum books, and the statement of damages as ascertained from the memorandum books was entered in the account-book of which "Exhibit O" is a transcript. All of the entries mentioned in said "Exhibit O," except the three last entries amounting together to $21.16, are in my handwriting. These entries embrace a period from June 6th, 1869, to August 7th, 1870, inclusive. I was at Rock Island during the period from June 6th, 1869, to October 7th, 1870—perhaps a month in all—at different times. All of the entries in the account-book from which "Exhibit O" is taken, were made at Rock Island. A portion of such entries were made in June, 1870. All of the entries except the one of July 16, 1870, were made by me in the month of June, 1870, at Rock Island. In June, 1870, I wrote up all the items embracing a period from June 6th, 1869, to said month of July, taking the items from the memorandum-books before stated. I know of my own knowledge, that "Exhibit C" is a copy of the letter sent to the Secretary of War. "Exhibit C" is a copy of a copy of the letter sent to the Secretary of War. The copy of such letter to the Secretary of War was made by me, and "Exhibit C" is a copy of such copy. "Exhibit D" was, I suppose, received by one of the firm of Harvey & Livesey. I was not present when the letter was taken from the mail. The letter was received as such correspondence is generally received—through the mail. I know it was so received, because it was brought in with the mail of the firm. I judge it was brought in with the mail of the firm from the envelopes and enclosures, &c., in which it was received. I couldn't now swear that I was present when the mail was received by them. At the distance of a year I cannot precisely state. My knowledge is, that the letter in question was handed me by Harvey & Livesey. My knowledge as to "Exhibit E" is the same as that stated with regard to "Exhibit D." I cannot now state positively when or how it was received. I could not swear positively that the letter of which a copy marked "Exhibit F" is attached, was sent to General Warren. I only know from information and belief. I was not at Rock Island at the time. I compared "Exhibit G" with the original, and I mailed the origi-

nal myself. It was a printed letter. Letters referred to in "Exhibit H" and "I" I did not see till after they were opened. Letter "Exhibit K" I saw before it was opened. I was in Rock Island on the 6th of October, and continued there for three weeks following. I did not see the letter marked "Exhibit J" sent, but "Exhibit L" I wrote and mailed myself. I was present when "Exhibit M" was being drafted, and saw it before it was sent, but have no personal dnowledge of its being sent.

I expect witness fees in this case.

To the second general interrogatory by the commissioner, the witness makes

Ans. I know nothing further.

GEORGE C. RUSSELL.

Subscribed and sworn to before me this 25th day of January, A. D. 1871.

W. A. P. MORRIS,
U. S. Commissioner, and ex-officio Commisssoner for the Court of Claims.

(Copy.)

(Exhibit N.)

SUPERINTENDENT OF CONSTRUCTION ROCK ISLAND BRIDGE,
ROCK ISLAND, ILL., *22d October, 1870.*

To Messrs. HARVEY & LIVESEY,
Contractors, &c., Davenport, Iowa,

DEAR SIRS: I have to acknowledge the receipt this day of two copies of your printed protest, dated 8th instant, and addressed "to all whom it may concern."

I remain, very respectfully, your ob't serv't,

J. N. MACOMB,
Col. Engineers U. S. Army.

(EXHIBIT O.)

Memorandum of damages on stone and damages sustained by Messrs. Harvey & Livesey, contractors, caused by long and repeated delays and stoppages in the work under their contract for building the masonry of Rock Island bridge.

1869.		
Sept. 16	—For 5 hours labor, Thomas Jones, on stone condemned, 50c..	$2 50
21,	" 3 " " " " " " " " ..	1 40
23,	" 2 " " " " " " " " ..	1 00
Oct. 19,	" 3 " " " " " " worked from 21 inches to use in 17-inch course, 50c.....	1 50
Sept. 17,	—For 3 hours labor, John Marcott, on stone condemned, 50c..	1 50
20,	" 1 " " " " " " " " ..	50
24,	" 4 " " " " 2 stones " " ..	2 00
29,	" 8 " " " " 3 stones " " ..	4 00
28 & 29,	8 " " William Harris, 2 stones " " ..	4 00
20,	For 11 " " Henry McNierny, 1 starling stone.....	2 50
21,	" 6 " " " " 1 " "	3 00
21,	" 2½ " " " " 1 " "	1 50
22,	" 3 " " " " on stone extra thick, worked from 21 inches to 18 inches, 50c.....	1 50
23,	—For 7 hours labor, Thomas Burke, on stone condemned, 50c..	5 30
27,	" 2½ " " " " " " " " ..	1 25
27,	" 7 " " " " working down stone from 15½ inches to 12½ inches, 50c.....	3 50
24,	—For 7½ hours labor, Fred Fack, on 3 stones in working down from 15 to 13 inches, 50c.....	3 75
Oct. 7,	—For 3 hours labor, Fred Fack, 1 stone condemned, 50c.....	1 50
7,	" 2½ " " " " 1 " " "	1 25
9,	" 2 " " " " 1 " " "	1 90
8,	" 6 " " Archy Shannon, 1 stone condemned, 50c....	3 00
9,	" 3 " " " " 1 " " " ...	1 50
Sept. 24,	" 4½ " " John Shannon, 1 starling, 50c.....	2 25
24,	" 3 " " " " 1 " "	1 50
Oct. 7,	" 4 " " Wm. Shannon, 1 " "	2 00
11,	" 3 " " " " 1 " "	1 50
11,	" 2½ " " " " 1 " "	1 25
Sept. 21,	" 2 " " Fred Gordon, 1 " "	1 00
24,	" 3 " " " " 1 " "	1 50
Oct. 2,	" 2½ " " " " 1 " "	1 25
8,	" 3 " " " " 1 " "	1 50
Sept. 20,	" 5 " " Wm. Faulkes, 1 stone condemned, 50c.....	2 50
24,	" 3½ " " " " " "	1 75
Oct. 7,	" 2 " " " " " "	1 00
17,	" 3½ " " " " " "	1 75
	1 Circular stone inspected and worked under the eye of the inspector and condemned, November 8, 1869, on abutment. The cost of this stone to us.....	3 25
Nov. 11.	—Extra labor in bush-hammering stone for abutment, ordered and required by inspector Warner, and subsequently countermanded by Major Stickney, at a cost to us of.....	7 00
11.	—Damage by loss of time for want of cement, to be supplied by the Government.....	65 00
	Damage by reason of suspension of work from July 22, 1869, to September 4. 1869, say 39 work days loss time.....	
	On 2 teams, at $4 per day each, $8 per day.....	312 00
	39 days loss time on carpenter, foreman, $5 per day.....	195 00
	39 " " mason, " 5 "	195 00
	39 " " blacksmith " 4 "	156 00

	Damage by reason of laying up of steamboat for want of proper plans and specifications to proceed with work, and also during suspension of work, 133 days in all, $40 per day, that being the daily charter contract.....	5,320 00
	Cost re-handling and storing stone by reason of delay in work by the Government, 2,500 yards, at $1.50.....	3,750 00
1870.		
July 16.—Stone rejected, prepared under instructions of inspector, viz:		
July 16	4 - 6 x 6 - 6 x 1 - 8 = 48 . 4 in.	
	4 - - x 2 - 2 x 1 - 7 = 13 . 4	
	2 - 9 x 6 - 6 x 1 - 7 = 27 . 5	
" 17	4 - 9 x 1 - 6 x 1 - 7 = 10 . 3	
" 18	4 - - x 1 - 6 x 1 - 7 = 9 . 6	
" 18	6 - 2 x 1 - 7 x 1 - 4 = 12 . 8	
" 18	4 - 4 x 1 - 6 x 1 - 5 = 8 . 10—4. 22-27 c. yards, $3.....	14 42
June 20—Stone rejected, prepared under instruction of inspector,		
" 20	5 - 8 x 3 - 0 x 1 - 4 = 22 - 4, $3 per yard.....	2 45
" 19	5 - 0 x 2 - 6 x 1 - 7 = 19 - -, $3 per yard.....	2 11
Aug. 7	1 piece coping for lower rest, 4 - 8 x 4 - 4½ x 1 - 4.....	16 60
		10,109 61

[NOTE BY CLERK.—Exhibits B, C, D, E, F, G, H, I, J, K, and L, being duplicates of papers found elsewhere in this record, are omitted here, as per stipulation of counsel for claimants and defendant, filed June 8, 1878.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.]

Deposition of Alexander Bruce, for claimants, taken at Chicago, Ill., on the 9th day of February, 1871.

First general interrogatory by the Commissioner:

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants.

My name is Alexander Bruce; my age, 43 years; my occupation, contractor; I have resided the past year at Marseilles; I have no interest, direct or indirect, in the claim which is the subject of inquiry; I am in no degree related to the claimants, to my knowledge.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. Were you the contractor for, and did you construct, the masonry of the railroad bridge to connect the State of Illinois with the island of Rock Island?

Ans. Yes, sir. I entered into the contract to construct the same for the Rock Island Railroad company.

Int. Is that bridge intended as a continuation of the railroad and wagon bridge being built by the United States to connect the city of

Davenport, Iowa, with the island of Rock Island, and of which bridge Messrs. Harvey & Livesey were the contractors for the masonry?

Ans. I so understand it.

Int. Read the advertisement attached to the contract now before you, and which is the advertisement inviting bids for the masonry of the bridge being built by the United States, and also read the proposal of Messrs Harvey & Livesey, dated May 25, 1869, and tell me whether such proposals, in your judgment, includes, or can possible be construed to include, the building of the coffer-dams with their protections?

(Objected to by the counsel for the United States, because it does not appear that this is the advertisement or the acceptance, and because the construction of the written instruments is solely a question for the court and not for the witness.)

Ans. I understand this to be simply a proposition to build masonry and not the coffer-dam.

Int. Do the words in the contract, "do hereby contract and engage with the said United States to construct the piers and abutments," in your judgment, include the building and construction of the coffer.dams and their protections?

(Objected to by counsel for the United States, for the same reason as the former question.)

Ans. No, sir.

Int. In the contract are these words, "payments in such funds as the Treasury Department may provide at the rate of thirteen dollars per yard for the masonry in the draw pier, and at the rate of eleven dollars per cubic yard for all other masonry." In your judgment do these words include, or can they be possible construed, to include any payment or payments for the building of coffer-dams and their protections?

(Objected to by counsel for the United States, for the same reasons above assigned; also object to the 3d, 4th, and 5th interrogatories as leading.)

Ans. No sir.

Int. How long have you been engaged in the building of bridge masonry and works of a similar nature?

Ans. Some eighteen years since I commenced, but I have not been constantly employed at it.

Int. Please describe to me the materials of which the masonry of "piers and abutments" must necessarily have been made, and also the materials of which coffer-dams and their protections are made?

(Objected to by counsel for United States, as incompetent.)

Ans. The masonry of piers and abutments are usually composed of stone, cement, and sand, sometimes of quick-lime instead of cement. The usual material for the construction of coffer-dams is timber, iron, sand or gravel or other soils or other materials; the material of the protections is timber, iron, and stone.

Int. Tell me, from your experience as a contractor of this kind of work, whether the work of solid masonry and the work of building

coffer-dams and their protections are not entirely two different classes of work?

Ans. I so consider them.

Int. Would the prices named in the proposal, $11 and $13 per cubic yard, have been reasonable or adequate for the solid masonry if the contractors had had the coffer-dams and their protections to put in first at their own expense?

Ans. I should say not.

Int. Would a contractor who had agreed to build an abutment of masonry in the Mississippi river be, or could he be, expected to erect the coffer-dam and its protections without being paid therefor separately?

(Objected to by the counsel for the United States, as leading and otherwise wholly incompetent.)

Ans. No, sir; unless so provided in the contract.

Int. Have you read the contract in question carefully; and, if so, do you find, by the specifications, or any other paragraph therein, any undertaking which can be construed, in your judgment as a practical builder and contractor, a liability of the claimants to build the necessary coffer-dams and their protections?

(Objected to by counsel for United States, for the same reasons assigned to the fifth interrogatory.)

Ans. No, sir; there is nothing specific relating to their building the coffer-dams.

Int. How much capital, in your judgment, would be necessary to carry on such a contract as the one now in question and prosecute the same to completion within the time therein specified?

Ans. I should say from $20,000 to $25,000.

Int. How much more capital would be required than that amount if the contractors had been required to build the necessary coffer-dams and their protections?

Ans. I should say $10,000 more.

Int. Was the building of the coffer-dams and protections included in your contract for building the masonry of the bridge built by you, as spoken to in the first interrogatory?

(Objected to by the United States, as irrelevant.)

Ans. No, sir.

Int. What is the custom amongst practical builders and contractors with reference to the building of solid masonry of bridges and the building of coffer-dams and their protections?

(Objected to as incompetent.)

Ans. They are usually separate, and never so included together, unless being so specified in the contract.

Int. In the construction of piers or abutments, where the length of them is nearly the same, but the width reduced; that is, where such reduction is caused by reducing the width of the piers at the base from fourteen feet to ten feet, and a reduction in the draw-pier from fifty-six feet to thirty-eight feet, and a portion of that draw-pier is hollow instead of being solid, and when the contractors had

not to furnish any material, would there be any difference or loss; and, if so, what difference or loss to the contractors who did the work?

(Objected to.)

Ans. I consider the loss to the contractors on the small pier would be at least twenty-five per cent., and on the large pier thirty per cent.

Int. The contract bears date June 1st, 1869. The contractors were ready to commence work a few days after that date, but were not furnished with any plan of any part of the work until the 4th day of September, 1869, and then only with the plan of one small abutment, during which time the claimants, their workmen, tools, and machinery, were in a great measure kept idle. Please tell me, as nearly as you can in your judgment, if the claimants suffered any, and, if so, what amount of damage in consequence of such delay?

(Objected to as leading, and assuming facts which are not proved.)

Ans. I should say from $10,000 to $20,000, in my judgment, would be the loss.

Cross-examined.

Int. Do you expect any fee, compensation, or benefit of any kind from the result of this suit?

No, sir.

Int. Did you perform any of the work, or furnish any of the materials?

Ans. No, sir.

Int. Have you ever seen this work in question?

Ans. I have.

Int. If I should employ you to build me a house for a fixed sum, would you expect me to pay you for the scaffolding?

Ans. No, sir, I should not, unless it was so specified.

Int. If I should agree with you to build me a ship at a fixed price, would you expect me to pay you anything extra for the ways upon which she was built?

Ans. No, sir, not unless so specified.

Int. If in digging for the purpose of laying the foundation of the house, it became necessary to use means to prevent the outer earth from caving in, would you expect to be paid anything extra for the expense thereby occasioned?

Ans. If the contract did not specify the nature and character of the foundation, I should.

Int. Do you mean to say, that if you made a contract to build a house for $10,000, you would expect to be paid more than the contract price?

Ans. I should expect to be paid for all that which was not specified in the contract.

Int. Suppose you contracted to lay the foundation at a certain depth and to build a house upon said foundation, all for a fixed price, would you expect to be paid anything extra for the work you might

have to do, or the materials you might have to use in preventing the outer earth from caving in?

Ans. If my contract stated that I was to assume all risks and responsibilities in excavating the foundation, then I would not expect to be paid anything extra.

Int. Suppose the contract was silent on that point, what then?

Ans. If there was nothing specified in the contract I should expect to bear the expense. In making contracts for the foundations, there is frequently difficulties to encounter that contractors cannot anticipate or foresee, and where the plans and specifications are silent on that point, it would be a question whether the contractor would be required to do it.

Int. Suppose, in excavating for the foundation of said house you should be troubled with water flowing in upon you and had to pump it out, would you expect the one for whom you were working to pay you anything extra for that trouble, provided you had made an express contract to lay the foundations and build the house for a fixed sum?

Ans. If I took the contract to erect that building and to dig the foundation down twenty feet, I should expect to bear all the expense that might arise from any impediments I might meet.

Int. Could piers of the kind in question be properly built without coffer-dams, or is not that the usual means employed?

Ans. It could be done without, but this is the usual means.

Int. Would it require cut stone to be as large in a pier ten feet wide as in one fourteen feet wide?

Ans. They can be used any size, and would make no difference.

Second general interrogatory by the Commissioner:

Int. Do you know of any other matter relative to the claim in question? If you do, state it.

Ans. I think of nothing else.

ALEXANDER BRUCE.

Sworn to and subscribed before me this 9th day of February, A. D. 1871.

P. A. HOYNE,
Commissioner Court of Claims.

There being no other witnesses, the further hearing of the testimony adjourned until the 18th, by mutual consent of the counsel of the claimants and the counsel for the United States.

P. A. HOYNE,
Commissioner for Court of Claims.

February 18th, 1871.—No witnesses appearing, the further hearing of the testimony adjourned until February 21st, 1871, at the hour of 10 o'clock, a. m., by mutual consent of counsel for claimants and the counsel for the United States.

P. A. HOYNE,
Commissioner for Court of Claims.

Deposition of Wm. H. Christian, for claimants, taken at Chicago, Ill., on the 21st day of February, 1871.

Pursuant to adjournment, counsel for the United States and the counsel for the claimant appeared; and the witness, William H. Christian, being produced, and he having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows, to wit:

First general interrogatory by the Commissioner:

Please to state your name, age, occupation, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Ans. My name is William H. Christian; I am 28 years old; I have resided in Chicago, Illinois, the past year; I have no interest, direct or indirect, in the claim; I am in no way related to the claimants.

Being interrogated by F. H. Harvey, for the claimants, witness says:

Int. What, if any, position do you hold in the office of the Chicago Tribune?

Ans. I am collector.

Int. Look at the advertisement now shown to you, and marked "Exhibit H," and attached to this your deposition, and tell me if this is a true copy of an advertisement which appeared in the Chicago Tribune newspaper of May 14, 1869?

Ans. It is.

Int. When did you compare the copy with the file of newspapers in the Chicago Tribune Office?

Ans. To-day.

Int. How many times, to your knowledge, did the advertisement appear in the Chicago Tribune?

Ans. Four times.

WILLIAM H. CHRISTIAN.

Sworn and subscribed to before me, this 21st day of February, A. D. 1871.

Cross-examination waived by Mr. Payson.

PHILIP A. HOYNE,
Commissioner for the Court of Claims.

By mutual consent the further hearing of the testimony adjourned until the 22d day of February, 1871, at 10 o'clock, a. m.

P. A. HOYNE,
Commissioner for the Court of Claims.

Deposition of James E. Abbott, for claimants, taken at Chicago, Illinois, on the 22d day of February, 1871.

Pursuant to adjournment, the counsel for the United States and the counsel for the claimant appeared; also the witness, James E. Abbott, who, after being duly sworn, deposeth and saith:

First general interrogatory by the Commissioner:

Please to state your name, age, and occupation; your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

My name is James E. Abbott; my age is 42; I have resided in Rock Island, Illinois, the past year; I have no interest, directly or indirectly, in this claim; I am in no way related to the claimants; I am professionally a contractor and civil engineer.

Being interrogated by F. H. Harvey, for the claimants, the witness says:

Int. How long have you been in the business of contractor and civil engineer?

Ans. About eighteen years.

Int. Are you acquainted with works of building the masonry of the road and wagon bridge from the island of Rock Island to the city of Davenport?

Ans. I am.

Int. The contractor for the construction of such masonry stipulated that "all the masonry to be first-class bridge masonry, in regular courses, the bond to be good; all the face stones to be laid alternately as headers and stretchers, and the bed of all stones to be dressed so that there shallbe no mortar bed of more than half inch in thickness; the courses pursuing the cut water of the piers to be smoothly dressed on their exposed faces, and the remainder roughly dressed; the masonry to be measured by taking the cubical contents of the finished work, excluding all technical and constructive measurements." It has been proved in the testimony taken in this suit that one half of the work was faced work, and the other half backing. What, in your judgment, would be the difference of measurement, if any, between the stone used in such masonry measured when taken from the cars in a rough state, and measured in the finished work—the backing is of the same thickness as the front stone—the stone will average sixteen inches thick—the backing was put in at random in the bond?

(The United States counsel objects to the above question, as no such evidence, so far as he is aware, has been offered.)

Ans. If the stone were really first-class, the measurement on the cars in the rough might equal the finished masonry in the piers, but ordinarily there is a sufficient loss between rough stone and worked stone to equal from ten to thirty per cent.—that is my experience.

Int. It has been proved in the testimony taken in this suit that the amount of masonry in the finished work of this bridge is 7,232 cubic yards; could that amount of masonry have been executed ac-

cording to the specification hereinbefore given, with any lesser quantity of stone taken from the cars than the quantity specified, namely, 7,232 cubic yards?

(The counsel for the United States objects; the question is leading.)

Ans. Ordinarily it would require as much at least rough stone as the finished work might measure, and the stone must be first-class at that.

Int. Where the finished work done in the masonry of this bridge measures 7,232 cubic yards, how much rough stone, in your judgment, would be requisite to complete such an amount of finished masonry? The stone was obtained from Singer and Talcott's quarry of Joliet.

Ans. I admit that if the rough stone was first-class, 7,232 cubic yards of rough stone might have completed that amount of finished masonry, but ordinarily, that is according to ordinary specifications for stone, that amount of finished masonry would require about 8,000 cubic yards of rough stone.

Int. Did you ever hold any appointment under the United States Government?

Ans. In the fall and winter of 1866 and 1867, I surveyed Rock Island rapids, in the Mississippi river, under General Jas. H. Wilson, U. S. Army, and made a report of such survey to him.

Int. Was any reference made in such report to the stages of water at which it was, in your judgment, practicable to carry on works of masonry or excavation in the Mississippi river?

Ans. My report had reference to the construction of coffer-dams and excavating rock in the channel of the river.

Int. What stages of water did you report, as, in your judgment, practicable to carry on such works?

(The counsel for the United States objects to this question, as incompetent.)

Ans. In my judgment, I reported that it was not politic or practicable to construct coffer-dams to resist a greater rise in the river than four feet above low water mark.

Int. State why you consider it not practicable to carry on such work at a higher stage?

Ans. I hold that the cost of constructing dams to resist a higher stage of water than four feet, is greater than the cost of pumping out the dams after they are overflowed. Our experience there proved that conclusively a gravitation dam must have more base than elevation to stand safely; that is, it must be wider than its height; the average stage of water in the Mississippi is below four feet above low water mark; as a consequence the chances would be that there would be so little of the time during the working season that the water would average above four feet, that it would be impolitic to spend mony to provide against higher stage of water.

Int. Are you acquainted with the Mississippi river at the point where this bridge is being built?

Ans. Yes, sir; I surveyed the first line for that bridge, under Gen. Wilson.

Int. In your judgment, could the contractors for the masonry of this bridge carry on their works with advantage at a much greater depth than four feet above low water mark?

(The counsel for the United States objects, as leading and incompetent.)

Ans. They could not do it to advantage; it would be at a greatly increased cost to themselves to do it.

Int. It has been proved in the testimony taken in this suit, that a reduction was made of the work in the masonry of the piers and abutments of this bridge from the original designs prepared when the contract was executed to the following extent, namely: "the width of the small piers at the base has been reduced from 14 feet to 10 feet; and the width of the draw pier reduced from 56 to 38 feet; and a portion of such draw pier is hollow instead of being solid; the length of the piers are nearly the same. The contractors not having to furnish any material, would there be any difference, and if so, what difference to the contractors who did the work by such reductions, the contractors being paid per cubic yard for the masonry?

Ans. Without going into a minute calculation, I should think that the loss to the contractors would be about 30 per cent., the reduction being nearly all dead work, and that work being less expensive to the contractors, not having to be cut.

Int. It has been proved that the contractors made extensive preparations to commence work under their contract, a few days after its date, June 1st, 1869; that the United States stopped all work under the contract by an order dated 22d of July, 1869; that the contractors were directed to resume work August 23d, 1869, and that no plan was furnished to contractors until September 4, 1869. In your judgment, would there be any loss to the contractors by such delays; and if so, tell me the amount of such loss approximately?

(The United States counsel objects, having no knowledge of any such proof.)

Ans. In my judgment, the damage and loss to contractors by these delays might be from $500 to $800 par day, for about thirty working days, so near as I can enumerate.

Cross-examined:

Int. Do you expect any fee, compensation, or benefit of any kind from the result of this suit?

Ans. No, sir.

Second general interrogatory by the Commissioner:

Int. Do you know of any other matter relative to the claim in quesion? If you do, state it.

Ans. I think of nothing further.

JAMES E. ABBOTT.

Sworn and subscribed to before me, this 22d day of February, A. D. 1871.

PHILIP A. HOYNE,
Commissioner Court of Claims in Chicago, Ill.

Deposition of Frederick D. Van Wagenen, taken at Rock Island, Illinois, on the 15th day of April, 1872.

The United States appeared by H. C. Connelly, as above stated.

FREDERICK D. VAN WAGENEN, being first duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Answer. My name is Frederick D. Van Wagenen; I have been a contractor for a number of years; am fifty-six years of age; my proper place of residence is Fulton, Oswego county, New York, but have been engaged on the rapids in the Illinois river improvements, and for the Government here during the past four years; have no interest in claim, and am not related to claimants.

Being interrogated by James W. Harvey, for claimants, witness says:

Question. You say you are a contractor. What contracts have you been engaged in for the last four years?

Answer. I have been engaged on the improvement of the Rock Island rapids; also furnishing stone for the locks around the Des Moines rapids; also the improvements in Illinois river, by dredging: being all for the United States.

Question. Are you acquainted with the building of coffer-dams; and, if so, what depth of water have you worked in, and where?

Answer. I am acquainted with the building of coffer-dams; I have built them on the Rock Island rapids; I built Duck creek coffer-dam, Moline coffer-dam, and Sycamore coffer-dam. I have built a good many coffer dams on the Oswego river, in the State of New York. I have built dams in various depths of water, all the way from one foot up to twenty-five feet.

Question. Did you ever make an estimate of the cost of building the coffer-dams for the new Rock Island government bridge at this point?

Answer. Yes, sir.

Question. Please tell me the cost of building such dams as were required for the masonry of this bridge?

Answer, My estimate at that time was thirty-six thousand dollars.

Question. Do you recollect how many dams there were, and the depth of water below low water?

Answer. It was represented to me that there would be seven dams, besides those for the abutments. The depth, as represented to me, was from five to twelve feet below low water. I never measured it.

(Answer objected to by H. C. Connelly, for United States.)

Question. It has been proved, in testimony of Addison M. Scott, that there was an extra depth of water, caused by the deposit of sand and gravel and loose rock on the rock-bed of river, at pier No. 2, 3½ to 4 feet; at pier No. 4, nearly 3 feet of gravel was removed; at pier No. 5, from 6 to 7 feet; at the upper rest of draw pier, one to one and one-half feet; making it some nineteen feet below low water at No. 5 pier. What, if any, would be the extra cost to build those dams, the contractors not knowing of this extra depth until the dams were pumped out?

Answer. My opinion would be that it would be worth a third more to find those bottoms.

Question. What would it cost per foot of extra depth of water below the profile shown to contractors of the Rodman-plan bridge, (this profile is calculated to show the bed of the river.)

Answer. I cannot answer that question accurately.

Question. Please look at drawing shown you, the same being marked Exhibit B, and attached to the testimony of Addison M. Scott as such exhibit, also at drawing marked Exhibit A, and attached to the said Scott's testimony, showing the plans for dams of piers. What would it cost, in your judgment, per foot in length of dam, measuring around the dam on center of dam, taking the average of dams as shown by Exhibits A and B?

Answer. Fifteen dollars per foot, running measure.

Question. Does that include pumping, baling, and the cribs?

Answer. Yes, sir.

Question. What would be the expense per day of pumping and furnishing all machinery, fuel, and labor for pumping those dams, running twenty-four hours?

Answer. It would cost fifty dollars per day for one pump.

Question. What would it cost per foot of extra depth of water below the profile of bed of river shown to the contractors of the Rodman-plan bridge?

(Objected to by H. C. Connelly, for United States.)

Answer. One hundred and fifty dollars per foot in each dam.

Being cross-examined by H. C. Connelly, Esq., for United States:

Cross-question. If the claimants are succeisful in this case, have you any hope, expectation, or promise of reward or benefit of any kind from them?

Answer. Not any, sir.

Question. Were you a contractor on the Rock Island rapids?

Answer. Yes, sir.

Question. Is your work all finished and accounts closed up?

Answer. My work is finished, but accounts are not closed.

Question. Have you any dispute with the Government as to the amount due you, if anything?

Answer. Yes, sir.

Question. In what shape is that dispute at this time?

Answer. There is a suit pending in the Court of Claims, and I am one of the claimants.

Question. Have you ever built abutments, piers, and coffer-dams similar to those constructed for the Rock Island bridge?

Answer. Yes, sir; except not as fine cut-work.

Question. When and where?

Answer. In the State of New York, on the Oswego canal, in 1855 and 1856. I did similar work in 1860. I did similar work on New York and Erie Railroad. Also in 1856, in the State of Illinois, across the Big Muddy river, in Jackson county.

Question. Were any of these works above alluded to as large in extent as the Rock Island bridge?

Answer. No, sir.

Question. At whose instance and request did you make an estimate of the cost of building coffer-dams for said bridge, and when and where?

Answer. My partner, Mr. E. Haroun. I made it at his request. It was perhaps a month or forty days before contract was awarded to claimants.

Question. When was claimants' contract awarded to them?

Answer. I can't answer it; I think it will be three years some time this coming summer.

Question. What object did you have in making an estimate of the cost of said coffer-dams?

Answer. Mr. Haroun solicited me to come up here and go in with him and bid for that work?

Question. Did you put in a bid for the work?

Answer. Did not, sir.

Question. Why not?

Answer. My advice to him was that we had work enough on our hands then; that we did not have time to see to it.

Question. In making an estimate of the cost of said coffer-dams, what margin did you leave for profit?

Answer. I do not remember, sir, that I made any.

Question. In making your estimates for contracts of this nature, do you never leave a margin for profit or loss?

Answer. Usually I do.

Question. Why did you not in this instance?

Answer. I can't say, sir.

Question. Were the coffer-dams finally built according to your estimate?

Answer. I can't say that. I have never been on any of them since they were commenced, that I remember of.

Question. Are you not totally ignorant of the actual cost of the construction of the coffer-dams finally built at said bridge, except from hearsay testimony?

Answer. I am.

Question. Have you any knowledge, from personal examination, of the condition of the river-bed on which the said piers and abutments rest, before the erection of said piers and abutments?

Answer. None, except what I could get by sounding down from a boat with a pike-pole.

Question. Did you ever have any personal experience as a contractor in preparing the river bottom or bed for the erection of piers or abutments, such as is mentioned in the direct question in this your deposition, in which the testimony of Addison M. Scott is first mentioned in this deposition, at piers Nos. 2, 4, 5, and the draw-pier?

Answer. I have.

Question. When and where?

Answer. In building the stone dam across the Oswego river.

Question. Please describe the extent of those abutments, piers, and coffer-dams mentioned in your last answer.

Answer. The abutments on each side of the river, which were eight in number on each side of the river, in dimensions were seventeen feet up and down the river, and sixteen feet high; and, in getting the bed for the dam clear across this river, which was about seven hundred feet, we had to dig from three to eight or nine feet below the surface of the bottom of the river. The water, when dammed off above, was not more than three feet above the surface of the river-bed; but the rock-bed of the river was very uneven, varying greatly in depth.

Question. In answer to the question relating to Exhibits A and B, filed with said Scott's testimony, you say it would cost per foot in length of dam (referring to coffer-dams) fifteen dollars, running measure. Please explain fully how you arrive at that estimate.

Answer. I think that the way I did that—my memory is now—was to take the cost per day of a steamboat, dredge, number of shovellers, dam builders, iron, and lumber, figure it up, and calculate about how many feet they would build in a day, and complete as they went along.

Question. When did you make this estimate?

Answer. I think it will be three years this summer.

Question. Were the coffer-dams, which were finally erected and used in the construction of said bridge, built in accordance with this estimate?

Answer. They were built on the same principle. I don't know anything about the estimate or cost.

Question. You say that it would cost fifty dollars per day for running one pump—furnishing all machinery, fuel, and labor, for pump-

ing those dams, running twenty-four hours. When and where did you make this estimate?

Answer. Right here on this table.

Question. Please explain fully how you arrived at this cost.

Answer. I arrived at it by coming to the conclusion that I could hire the machinery for fifteen dollars per day; that I could hire the engineers for eight dollars per day; furnish the coal for twenty-four dollars; and three dollars would furnish one fireman and the oil.

Question. Do you know, from your own knowledge, what the actual cost of running one pump twenty-four hours at said coffer-dams finally was?

Answer. You can seldom get two pump-boilers but what one will consume more coal than the other. I could not say at these coffer-dams, but I can say at my own coffer-dams.

Question. Do you know, from your own knowledge, what the actual cost of running one pump twenty-four hours at said coffer-dams finally was?

Answer. No, sir; I don't.

Question. You say, in answer to direct interrogatory, that it will cost one hundred and fifty dollars per foot in each dam "shown to contractors of the Rodman plan bridge." What was the Rodman plan bridge?

Answer. I only know what the Rodman plan was from hearsay; that was, as I understood it, the bed of the river as it is without excavating.

Question. If you do not know what the Rodman plan bridge is, how can you swear that it would cost one hundred and fifty dollars per foot in each dam of extra depth of water below the profile of bed of river?

(James W. Harvey suggests to witness that, according to estimate of witness, it costs less per foot to put dam in deep water than in shallow water. This suggestion is objected to by H. C. Connelly for United States.)

Answer. My answer was, and is again, from my understanding, that the Rodman plan was the natural bed of the river. Now the way I get at the one hundred and fifty dollars per foot is from my experience of doing such kind of work. My understanding is that it comprised the measurement all the way round.

Question. How do you know that the Rodman plan is the natural bed of the river?

Answer. I only know it from hearsay.

Question. Have you ever had any personal experience in the erection of coffer-dams in extra depths of water, as mentioned in the last direct question of this your deposition?

Answer. Yes, sir.

Question. When and where?

Answer. I believe I explained this before: in building the dam across the Oswego river.

(Witness says that, in explanation of his answer to the last direct

question, which is "one hundred and fifty dollars per foot in each dam," I would like to add one-quarter more to the foot than the upper 13 feet cost. I made my estimate on nine and a half feet of water averaged across the river. I mean that it will cost 25 per cent. more on every foot you go below the nine feet and a half; that is, I add 25 per cent. to the first foot; fifty per cent. to the second; seventy-five per cent to the third, and one hundred per cent. to the fourth, and so on.)

Second general interrogatory by the commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

FREDERICK D. VAN WAGENEN.

Sworn to and subscribed before me this 15th day of April, A. D. 1872.

EDWARD D. SWEENEY,
United States Commissioner.

Deposition of James E. Abbott, taken at Washington, May 4, 1871.

JAMES E. ABBOTT, being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Answer. My name is James E. Abbott; civil engineer and general contractor; forty-three years of age; Rock Island, Illinois; I have no interest in the claim which is the subject of inquiry; I am not related to the claimants.

Being interrogated by Enoch Totten, Esq., for the claimants, the witness says:

Question. What business are you engaged in?

Answer. That of constructing a railroad from New York to Council Bluffs, with a harbor improvement within the harbor of New York.

Question. What part of the work on this railroad have you charge of; and does it include the engineering and letting of contracts?

Answer. I have sole and supreme charge of the work both as to letting contracts and engineering.

Question. How long have you been engaged in the engineering business?

Answer. About twenty years.

Question. Do you know anything about the railroad bridge across

the Mississippi River, at Rock Island, Illinois—the new bridge; if so, what?

Answer. I do. I know that the new bridge is located several hundred feet below the old bridge, from such point on the Iowa shore to the island of Rock Island as to rest on the extreme lower end of said island.

Question. Did you ever do any surveying or make any examination of the river at that point; and, if so, for whom and at what time?

Answer. I did, in October, 1866. I surveyed a line from the Iowa shore to the island, as a basis for preliminary estimates for the bridge in question, at the instance of Colonel Peter C. Hains, assistant to General James H. Wilson, in charge of the work.

Question. Have you seen the work on the bridge during its construction?

Answer. I have, frequently.

Question. Did you ever build or superintend the building of coffer-dams; and, if so, state about how many?

Answer. I have built, or had built under my immediate supervision, more than fifty coffer-dams, in twenty years, of various sizes.

Question. Did you ever build any in the Mississippi river?

Answer. I have.

Question. Have you any in process of construction now?

Answer. I am now preparing for the letting of work that involves the building of very large coffer-dams in New York harbor.

Question. Did you see any of the coffer-dams built by the complainants at the Rock Island bridge?

Answer. I did.

Question. Have you examined the exhibits on file in the Court of Claims belonging to the deposition of Mr. A. M. Scott? When and where?

Answer. I have examined them this 3d of May, 1872. They are marked Exhibits A, B, and C, respectively.

Question. Have you made any estimate of the cost of building the coffer-dams built by Harvey & Livesey, as delineated on the said exhibits?

Answer. I have.

Question. Please state the cost, as you estimated it, of the Davenport shore abutment?

Answer. My estimate of the cost of the foundation of the Davenport shore abutment is two thousand six hundred and sixty-eight dollars and thirty-five cents ($2,668.35.) I mean by that the building of the coffer-dam, the pumping and exhausting the water, and preparing the foundation to lay the stone.

Question. Please state your estimate for the coffer-dams of the other piers and abutments, as constructed by claimants.

Answer. For pier No. 1, I claim it will cost four thousand six hundred and sixty-eight dollars ($4,668.) In my judgment, I would return five thousand five hundred and ninety-two dollars for pier

No. 2, ($5,592.) The plans do not show that Harvey & Livesey did anything on pier No. 3; therefore I return nothing. On pier No. 4, I estimate six thousand four hundred and ninety-five dollars ($6,495.) On pier No. 5, I estimate one thousand three hundred and seventy-six dollars and forty cents, ($1,376.40.) On the upper starling or rest for the draw-pier, I estimate eight thousand three hundred and fifty-six dollars and ninety-six cents, ($8,356.96.) On the pivot-pier, I estimate four thousand eight hundred and forty-two dollars and fifty-six cents, ($4,842.56.) On the lower rest of the draw-pier, I estimate three thousand six hundred and ninety-eight dollars and nineteen cents, ($3,698.19.) On the Illinois shore abutment, the Rock Island abutment, I estimate three thousand seven hundred and eighty dollars and ninety-eight cents, ($3,780.98.) This is all based on an absolute calculation, which I propose to stand by—a question of reasonable cost. These estimates include all timber-work, all iron-work, all material for crib-work, and all pumping and other preparation of the foundation for laying of stone, and also including the filling of the coffer-dams with earth.

Question. In your judgment, could this work have been performed for a less sum than you have estimated?

Answer. No, sir; as a contractor I would not agree to do the work for the amounts named, for my estimates are based upon cost of material and labor, and intended to cover cost alone, by my best judgment. I add here that, in my opinion, a judicious contractor would charge an advance of 40 per cent. above cost for contingencies.

(Counsel for United States objects to both the last question and answer.)

Question. What is the usual percentage allowed or estimated for contingencies in work of this character?

(Objected to by counsel for the United States.)

Answer. From 40 to 100 per cent., dependent upon the probabilities of floods in the river; 40 per cent. is a reasonable per cent. of advance for contingencies and profits.

Question. If unusal floods occurred in the river would 40 per cent. be a reasonable allowance?

(Objected to.)

Answer. In case of unusual floods, 40 per cent. would be a minimum allowance.

Question. Please to state what are the risks to be assumed by the contractor in a work of this kind in the Mississippi river?

(Objected to by counsel for the United States.)

Answer. First, the risks incident to the navigation of the river, in having the coffer-dams destroyed by rafts and steamboats; second, the risks incurred by rises in the waters in the river; third, risks peculiar to delay in the delivery of material; fourth, in cases of delay the risk of filling of the dam and extraordinary expenses in pumping.

Question. What is the current of the river at this point?

Answer. At a medium stage of water, about four miles an hour at that point.

Question. Please explain how many classes of masonry there are known to your profession, and state what they are.

Answer. I am using at this time four classes of masonry, known respectively as first, second, third, and fourth class masonry. I consider first class masonry such work as is laid in courses, with perfect beds and bonds, and in hydraulic cement. We take second class masonry as such work as is laid in hydraulic cement, and not in perfect courses; rather in irregular courses. Third class masonry we consider as rubble masonry, laid in cement, or lime, or dry, as the case offers. Fourth class masonry is composed of stone laid without mortar to line, and in perfect order; and, for convenience, we frequently speak of the filling of the cribs with stone as fourth class masonry.

Question. Is there such a term known to the profession as rip-rap masonry?

A. Yes, sir.

Question. Please to look at the plans from the War Department now before you, and state whether the draw pier is complete without the foundation or crib-work between the upper and lower rests and the pivot?

(Objected to as immaterial.)

Ans. It is not complete without that work.

Question. What is that crib-work made of?

Answer. The outer surface timber resting on a foundation of first class masonry, and filled with dry masonry.

Question. Do you know Mr. Van Wagenen; and if so, how long?

Answer. Yes; I have known him about five years.

Question. What is his reputation in your profession as a coffer-dam builder?

(Objected to).

Answer. That he is one of the best in the United States; and I so consider him.

Question. How long have you known Harvey & Livesey, and what is their reputation as contractors?

Answer. I have known them about six years, and their reputation is good as contractors.

Being cross-examined by Alexander T. Gray, Esq., for the United States, witness says:

Question. When did you first see this work on the Rock Island bridge?

Answer. I think I first saw this work in the summer of 1869.

Question. How often since the summer of 1869 have you seen this work while it was in progress?

Answer. About once in sixty days.

Question. Were you familiar with the preparations of Harvey & Livesey for the prosecution of this work?

Answer. I was.

Question. Will you state what preparations they had made previous to September, 1868, for the prosecution of this work?

Answer. I remember clearly and distinctly that they had erected skids and machinery for the receiving and discharging of stone and other material from cars, and made other necessary preliminary arrangements for the prompt and energetic prosecution of the said work.

Question. What are the other preparations to which you refer as necessary for the proper prosecution of the work?

Answer. I mean the erection of sheds, and every other convenience needed for the cutting and preparing of stone and material delivered to carry on the work with promptness and energy at the opening of the season of 1870.

Question. Were you a close observer of this work up to September, 1870?

Answer. I was.

Question. Were you acquainted with Messrs. Harvey & Livesey at that time, and on intimate social terms with them?

Answer. I was sufficiently acquainted with them to know of all their movements on the work in question.

Question. How long were you in the neighborhood of the work in the summer of 1869, and in the habit of seeing said work; and how often did you see it during that time?

Answer. During the summer, fall, and winter of 1869, as a contractor on the Rockford, Rock Island, and St. Louis Railroad, I had my headquarters at Rock Island; and, as a rule, I was there every day, and had cognizance of what was going on at the work in question.

Question. Did you ever see any preparation on the part of Messrs. Harvey & Livesey for the building of coffer-dams during that time?

Answer. I do not remember that I specially noted their preparations for building coffer-dams during that time.

Question. Did they put up any cribs during that time?

Answer. I do not remember.

Question. At what time in 1869 did you cease to be familiar with the work?

Answer. I was familiar with the work up to the summer of 1870—I include the autumn of 1869—as a general observer of the work.

Question. In your estimate in relation to coffer-dams, do I understand you to estimate the whole cost of building the coffer-dams, the pumping out of the water, and preparation of the foundation or beds for masonry?

Answer. That is what I mean by my estimates.

Question. How much of the cost of the Davenport shore abutment in your estimate is set down to the account of lumber?

Answer. $227.20.

Question. Are your estimates of these coffer-dams upon the basis of those made by Harvey & Livesey, as to dimensions?

Answer. My estimates are based upon what I, as an expert, believe to be necessary in each and every case, to resist the force of the current and other phenomena developed in the case in question.

Question. Do you know the outline, size, and other dimensions of the coffer-dams constructed by Harvey & Livesey for the prosecution of this work?

Answer. I have taken the size from the maps, plans, profiles, and elevations presented to me for estimates on this occasion.

Question. What did you set down to the account of exhausting the water in the coffer-dam for the Iowa shore abutment?

Answer. $476.67.

Question. How did you ascertain the cost of preparing the bed for that abutment?

Answer. From my knowledge of the dip of the rock at that locality.

Question. Have you ever made an estimate, otherwise than from your recollection of the dip of the rock as to how much excavation was necessary to secure a proper bed for the masonry of that abutment?

Answer. I have not.

Question. Upon what data have you formed your estimate of the cost for preparing the beds for masonry of the island abutment, the draw-pier, and the other several piers of this bridge, after the erection of coffer-dams and pumping out of the water?

Answer. I have selected such data as have been furnished and are on file by the engineers and officers of the United States Government, in reference to the case in question, and consider it satisfactory and conclusive.

Question. How often were you at this bridge in 1870, and did you observe the work?

Answer. During the year 1870, and up to July 1, 1871, I resided with my family in the city of Rock Island, Illinois, and had occasion to observe the work as often as once a month during this period.

Question. What would the filling of the coffer-dams cost at the Iowa shore abutment?

Answer. $325.40.

Question. What was the cost of the preparation of the beds for masonry at the Iowa shore abutment after the pumping out of the water?

Answer. $504.

Re-examined:

Question. Were the coffer-dams built by Harvey & Livesey proper for the purpose? Please to refer to testimony of Major Stickney, page 10.

Answer. I cannot answer that question in the way it is put.

Question. Referring to page 10, of Major Stickney's testimony, what are the proper thicknesses for the walls of coffer-dams, in proportion to the depth at which they are built?

Answer. In no case should the walls of a coffer-dam be any less in thickness than the elevation of the dam. Ordinarily there should be an allowance of ten per cent. for the force of the current.

JAS. E. ABBOTT.

Sworn to and subscribed before me, this 4th day of May, A. D. 1872.

[SEAL.] JNO. CRUIKSHANK,
Commissioner of the Court of Claims.

Deposition of John Fraser, taken at Washington, May 8, 1872.

JOHN FRASER, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Answer. My name is John Fraser; forty-six years of age; architect; Philadelphia, Pennsylvania; I have no interest whatever in the claim which is the subject of inquiry; I am not in any way related to the claimants.

Being interrogated by Enoch Totten, Esq., for the claimants, the witness says:

Question. Look at the maps or plans now before you, being the plans of the Rodman bridge and the plans of the bridge as actually built across the Mississippi at Davenport, Iowa, returned by the War Department, in pursuance of the call of the Court of Claims, and state whether or not you have made a computation of the masonry work in the two plans; and if you have made such computation, state it.

Answer. I have made a computation from the plans referred to. (Witness exhibits a paper hereto annexed, marked Exhibit J. F.) I have made two calculations here: one placing the draw-pier at the point No. 5, and one placing it at pier No. 6; placing the draw at the point of pier No. 5, according to Rodman's plan; I make the sum total in piers, draw-pier, cross-walls, and land abutments, 31,579 yards; less the cross-walls and foundations, between the upper and lower rests, there will be left 27,768 yards; placing the draw-pier at No. 6, as per the General Warren plan, I find that there are in the piers, draw-piers, cross-walls, and land abutments, 18,206$\frac{3}{17}$ yards; less the cross-walls and foundations between the upper and lower rests, there will be 15,632 yards.

(Counsel for the United States objects to all evidence, except as to masonry for piers and abutments.)

I took the dimensions where the figures were given, and where

not given applied the scale, and found the figures and the scale did not agree in every instance.

Question. How long have you been an architect?

Answer. I have been in the business about twenty-five years, and am now engaged in it; I am in the habit of making calculations of the contents of masonry and other work from plans and drawings.

Cross-examined by Alexander T. Gray, for the United States:

Question. Have you any other knowledge of the Rock Island bridge matter, except that derived from the plans submitted to you in the course of this investigation?

Answer. None, except from a paper handed me by Mr. Harvey as to depth of piers.

Question. Have you stated the depths of water as one of the elements of the calculation you have made?

Answer. I have. I would state that I have also read the printed testimony in the case, in reference to the depths of piers and amount of masonry in the two land-abutments.

Question. In making your calculations as to amount of masonry in the two piers, I understand you to include the cross-walls between the upper and lower rests; what else did you include?

Answer. I included the foundation of the draw, two feet below low-water.

Question. Did you include any thing in that estimate beyond the proper abutments of the bridge itself?

Answer. I did not; nothing but the two abutments; the quantity was taken from the printed testimony.

Question. What batter did you give to the masonry in the piers and abutments under General Warren's plan?

Answer. I took it as marked on the plan—batter, an inch to a foot.

Question. Does all your testimony then, and the exhibit filed here, relate to General Rodman's plan?

Answer. It relates to placing the Rodman draw-pier in the two positions as indicated at the points of the piers Nos. 5 and 6.

Question. Have you made any calculations based on the figures and dimensions presented by General Warren's plan?

Answer. No, sir.

Question. In the calculation of the contents of the masonry in this work, do you think it possible for two honest and competent engineers, experts, to differ to the amount of 10,000 or 15,000 yards?

Answer. There should not be much difference, measuring from the same plan.

Question. Are you acquainted with General Warren?

Answer. No, sir.

Re-examined for claimants:

Question. What were the depths of the water you based your calculations upon?

Answer. Pier No. I, three feet six inches; pier No. II, eleven feet; pier No. III, four feet nine inches; pier No. IV, nine feet three inches; pier No. V, eighteen feet six inches; pier No. VI, four feet four inches. These depths were taken two feet below low-water mark. These data correspond with those given on page 50 of claimants' testimony.

JOHN FRASER.

Sworn to and subscribed before me this 8th day of May, 1872.

[SEAL.] JNO. CRUIKSHANK,

Commissioner of the Court of Claims.

EXHIBIT J. F.—*Jno. Cruikshank, Comm'r Court of Claims.*

Details of estimate of masonry in draw and other piers for the Rock Island Railroad and wagon bridge, according to the "Rodman plan."

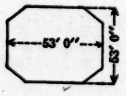
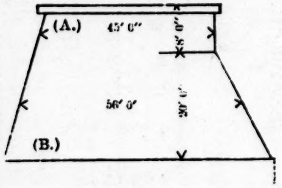
Description.	Number.	Length.	Breadth.	Height.	Contents.	Remarks.
Rodman draw-pier placed at the point on No. 5 pier, (2 feet below low water)	1	431′ 0″	56′ 0″	18′ 6″	446,516 ft.	
Placing this pier where the draw is built by the Gen'l Warren plan, (2 feet below low water)	1	431′ 0″	56′ 0″	4′ 4″	104,589	
Starling, or upper rest	1	70′ 0″	35′ 0″	30′ 0″	73,500	
Pivot of draw	1	53′ 0″	53′ 0″	30′ 0″	84,270	
Deduct for hollow	4	12′ 0″	7′ 6″	30′ 0″		10,800 0
Ditto for 4 angles	2	15′ 0″	15′ 0″	30′ 0″		13,500 0
Lower rest of draw pier	1	53′ 0″	20′ 0″	34′ 0″	36,040′ 0″	= 24,300′ 0″
Cross-walls for support of crib work	8	47′ 0″	6′ 6″	25′ 0″		61,100 0
Foundation for draw, (2 feet below low water)	2	160′ 0″	56′ 0″	2′ 4″		41,813 0 = 102,913′ 0″
Pier No. 1, (upper part)	1	45′ 0″	7′ 6″	8′ 0″ (A)	2,700′ 0″	
Ditto	1	56′ 0″	10′ 0″	20′ 0″ (B)	11,200′ 0″	
Work 2 feet below low water	1	72′ 0″	14′ 0″	3′ 6″	3,528′ 0″	
Pier No. 2, (upper part)	1	45′ 0″	7′ 6″	8′ 0″	2,700′ 0″	
Ditto	1	56′ 0″	10′ 0″	20′ 0″	11,200′ 0″	
Work below low water, (2 feet)	1	72′ 0″	14′ 0″	11′ 0″	11,088′ 0″	
Pier No. 3, (upper part)	1	45′ 0″	7′ 6″	8′ 0″	2,700′ 0″	
Ditto	1	56′ 0″	10′ 0″	20′ 0″	11,200′ 0″	
Work below low water, (2 feet)	1	72′ 0″	14′ 0″	4′ 9″	4,788′ 0″	
Pier No. 4, (upper part)	1	45′ 0″	7′ 6″	8′ 0″	2,700′ 0″	
Ditto	1	56′ 0″	10′ 0″	20′ 0″	11,200′ 0″	
Work 2 feet below low water	1	72′ 0″	14′ 0″	9′ 3″	9,324′ 0″	
Pier No. 5; difference in location of No. 5 & 6.						
Pier No. 6, (upper part)	1	45′ 0″	7′ 6″	8′ 0″	2,700′ 0″	
Ditto	1	56′ 0″	10′ 0″	20′ 0″	11,200′ 0″	
Work 2 feet below low water	1	72′ 0″	14′ 0″	4′ 4″	4,368′ 0″	
Island-shore abutment						427 y'ds { Reference to Major Stickney's testimony, page 133.
Iowa land abutment						675 9-10 y'ds

EXHIBIT J. F.—*Sheet No. 2.*

RECAPITULATION.

"Rodman draw-pier," placed in position of No. 5 pier, instead of at No. 6	446,516′ 0″	
Starling, or upper rest	73,500 0	
Rest on upper starling	1,318 8	
Pivot of draw, less deductions	59,970 0	
Lower rest of draw-pier	36,040 0	
Cross wall for support of crib work		61,100′.0″
Foundation of draw-pier, 2 ft. below low water		41,813 .0
		27) 102,913. 0
		= 3,811 16-27 y'ds cubic
Pier No. 1	17,428′ 0″	
Pier No. 2	24,988′ 0″	
Pier No. 3	18,688′ 0″	
Pier No. 4	23,224′ 0″	
Pier No. 5 (included in above.)		
Pier No. 6	18,268 0	
	27) 719,940 80 (	
	26,664 12-27 cubic y'ds.	

E. and O. E.
WASHINGTON, D. C., *May* 7, 1872.

JOHN FRASER, *Architect*

Draw-pier placed at No. 6 pier, as per "Gen'l Warren plan."

Draw-pier placed at position of pier No. 6					104,589 0	
Starling, or upper rest					73,500 0	
Rest on upper starling					1,318 8	
Pivot of draw, less deductions					59,970 0	
Lower rest of draw-pier					36,040 0	
Cross walls for the support of crib-work	8	47′0″	6′6″	11′4″		=27,698′.9″
Foundation for draw-pier 2 ft. below low water	2	160′0″	56′0″	2.4″		=41,813′.0″
Pier No. 1					17,428′0″	
Pier No. 2					24,988′0″	27)69,511,0
Pier No. 3					18,688′0″	
Pier No. 4					23,224′0″	2,574 13-27 y'ds cubic.
Pier No. 5, upper part	1	45′0″	7′6″	8′0″		
ditto	1	56′0″	10′0″	20′0″		
Work 2 ft. below low water	1	72 0	14′0″	18′6″	32,548′0″	
					27)392,293 8	
					14,529 0 y'ds cube.	

E. & O. E.
WASHINGTON, D. C., *May 7, 1872.*

JOHN FRASER, *Architect.*

EVIDENCE FOR THE DEFENDANT.

Deposition of G. K. Warren, for defendant taken at Washington, February 6th, 1872.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On the 6th day of February, A. D. 1872, at my office in said district and county, personally came Gouverneur K. Warren, the witness within named, upon call of the United States, and, after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, the narrative contained in the within deposition was written down by me, in the pesence of the witness, who then subscribed the deposition in my presence.

The within deposition is to be used in the trial of the above entitled cause now pending in the Court of Claims.

The claimants appeared by Enoch Totten, Esq., and the United States by Alexander T. Gray, Esq.

[SEAL]

JOHN CRUIKSHANK,
United States Commissioner,
Commissioner of the Court of Claims.

Gouverneur K. Warren, being duly sworn, deposes as follows:

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants.

Answer. Gouverneur K. Warren; major in the Engineer Corps; forty two years of age; I have no interest in this claim; I am not related to the claimants.

Being interrogated by Alexander T. Gray, Esq., for the United States:

Question. At what time did you take charge of the construction of the Government railroad bridge over the Mississippi river, between Rock Island, Illinois, and Davenport, Iowa.

Answer. The instructions from Washington were issued on the tenth of July, 1869, directed to me at St. Paul. I reached St. Paul on the 13th July, and found the instructions there. As soon as I could prepare instructions for Major Stickney I sent him to Rock Island to take charge for me. My instructions required a suspension of all work until I could submit a plan for the carrying on of the work to the Secretary of War, and under that Major Stickney suspended all the work on the 22d of July. From that time I considered myself in charge of the work.

Question. In what condition did you find the plans and surveys for prosecution of this work at the time you took charge of it, and

what difficulties did you have to encounter
formance of the duty required of you?

Answer. I reached Rock Island personally
and went over the whole matter with Gener
doing that I found it necessary to go to Washi
the Chief of Engineers and the Secretary of W
there were any special objects in putting me in
pending the work. I found that there were thr
plied with in the construction of the bridge: On
of bridge, one limiting its cost, and one making
injuriously affect navigation. I told the Secretary I th
could proceed with the work without violating any of t
and he then directed me to order the work that I had sto
resumed. That was on July 30—Friday. I telegraphed
Stickney, directing him to resume the work that had bee
I returned to Rock Island at once, reaching there Monda
2d, and from that time gave my attention to the work on t
The details of the work had not all been worked out b
Rodman at that time. The method of wagon-road app
ticularly in Davenport, was undecided, and the propose
of the abutment was unsatisfactory to the city authoriti
had been no specific location made for the piers, though
derstood in general terms, and the proposed location of
pier was unsatisfactory to the river men. The axis of the
its proposed point of crossing the island, had been agree
tween General Rodman and the railroad company, but no in
observations had been made by General Rodman to det
course of the current in regard to it. The map of sound
proposed location was not complete and thorough enoug
mine all the information necessary in establishing the pi
therefore, to make surveys to ascertain the character of t
course of the current, and to devise means of adapting a
approach in Davenport. These necessary works occupie
the 22d of August, at which time the general plan was d
the location of the Davenport abutment, as I had prop
given to the contractors on the 23d of August, I think.

Question. Please state, generally, the differences betwe
of General Rodman for this bridge and the plans made
as to size of piers, size and location of draw pier, and in
ticulars, as the same affected the amount of masonry r
the facility of executing the same?

Answer. General Rodman's plans, as shown by his dr
for two kinds and sizes of piers. The difference was sh
by red figures on the diagram. The drawings themse
mensions in black, were for a double-track railroad, wit
on-way above the railroad. The figures in red showed
which he proposed to adopt for a narrower wagon-way,
above or below the railroad. The first plan was estim
eral Rodman to contain sixteen thousand four hundre

five cubic yards of masonry, (illegible yards,) and the comparison I am going to make is not with this first plan, but with the one in red figures. The diagrams themselves are made, I think, on the scale of the black figures, and the reductions are marked in red. In order to accommodate the wagon approaches in Davenport, I placed the main abutment on that side at the edge of low water, thus moving it about one hundred and ninety feet from the first proposed location. I don't know how much masonry General Rodman would have had in his abutment, but not much different from mine. This abutment would now at stages above low water require a coffer dam. In the other location it would not, but it was situated so that the stone, in constructing it, could be taken at once from the scows by the travelers, and laid in place. In the first position, it could not. Considering the proximity to the shore, I think, under ordinary circumstances, this abutment could be built as cheaply in my location as in the other, taking into account all the work. The next important change was in the location of the draw pier, and in the dimensions of the different parts of it. It was narrowed from forty-four to thirty-six feet on top. The object in reducing it was to interfere as little with the flow of the water as possible, and thus be more favorable to navigation. The upper end of the pier—called the upper starling—and rest-wall were separated in General Rodman's plan, the masonry being connected by a wooden frame. I extended the walls of the starling down to connect with the rest-wall. The batter in all my work was one-half of an inch to a foot. General Rodman's was one inch to a foot. The effect of this change of batter was to make all the bases of General Rodman's work having the same top-width as mine, wider than mine, and all of mine that had the same width at the base, in the same ratio broader on top than his. I also changed the form of the starling itself. My location of this starling was in about the same depth of water as General Rodman's—the velocity of the current not quite as great in my case as in his. I calculated that his would contain one thousand three hundred and forty-four cubic yards of masonry, and mine would contain one thousand two hundred and sixty-three. His required a coffer-dam eighty feet by fifty-two feet, and mine a coffer-dam sixty feet by forty feet. The pivot part of the draw I made circular instead of hexagonal, and I made mine solid, though on his plan it was undetermined. I cannot say it was built so, but I so designed it. My pivot was placed in about four feet of water. All the depths mentioned in this place are low-water depths. If General Rodman's design for a pivot had been placed in the same depth, his would have contained one thousand one hundred and eighty-six cubic yards, if hollow, and mine one thousand and ten cubic yards. His coffer dam would have been fifty-six feet square, and mine forty-one feet square, inside. At the place where General Rodman himself designed to place it, to wit: about ten feet low-water depth, it would have contained one thousand six hundred and thirty-four cubic yards. The lower starlings, on both designs, were alike, differing

what difficulties did you have to encounter in entering on the performance of the duty required of you?

Answer. I reached Rock Island personally on the 26th of July, and went over the whole matter with General Rodman, and after doing that I found it necessary to go to Washington to consult with the Chief of Engineers and the Secretary of War, and ascertain if there were any special objects in putting me in charge of it, and suspending the work. I found that there were three laws to be complied with in the construction of the bridge: One defining the kind of bridge, one limiting its cost, and one making provisions not to injuriously affect navigation. I told the Secretary I thought we could proceed with the work without violating any of these laws, and he then directed me to order the work that I had stopped to be resumed. That was on July 30—Friday. I telegraphed to Major Stickney, directing him to resume the work that had been stopped. I returned to Rock Island at once, reaching there Monday, August 2d, and from that time gave my attention to the work on the ground. The details of the work had not all been worked out by General Rodman at that time. The method of wagon-road approach, particularly in Davenport, was undecided, and the proposed location of the abutment was unsatisfactory to the city authorities. There had been no specific location made for the piers, though it was understood in general terms, and the proposed location of the draw pier was unsatisfactory to the river men. The axis of the bridge, and its proposed point of crossing the island, had been agreed upon between General Rodman and the railroad company, but no instrumental observations had been made by General Rodman to determine the course of the current in regard to it. The map of soundings at the proposed location was not complete and thorough enough to determine all the information necessary in establishing the piers. I had, therefore, to make surveys to ascertain the character of the bottom, course of the current, and to devise means of adapting a wagon-road approach in Davenport. These necessary works occupied me until the 22d of August, at which time the general plan was decided, and the location of the Davenport abutment, as I had proposed it, was given to the contractors on the 23d of August, I think.

Question. Please state, generally, the differences between the plans of General Rodman for this bridge and the plans made by yourself, as to size of piers, size and location of draw pier, and in other particulars, as the same affected the amount of masonry required, and the facility of executing the same?

Answer. General Rodman's plans, as shown by his drawings, were for two kinds and sizes of piers. The difference was shown partly by red figures on the diagram. The drawings themselves, and dimensions in black, were for a double-track railroad, with wide wagon-way above the railroad. The figures in red showed reduced sizes which he proposed to adopt for a narrower wagon-way, placed either above or below the railroad. The first plan was estimated by General Rodman to contain sixteen thousand four hundred and sixty-

five cubic yards of masonry, (16,465 cubic yards,) and the comparison I am going to make is not with this first plan, but with the one in red figures. The diagrams themselves are made, I think, on the scale of the black figures, and the reductions are marked in red. In order to accommodate the wagon approaches in Davenport, I placed the main abutment on that side at the edge of low water, thus moving it about one hundred and ninety feet from the first proposed location. I don't know how much masonry General Rodman would have had in his abutment, but not much different from mine. This abutment would now at stages above low water require a coffer dam. In the other location it would not, but it was situated so that the stone, in constructing it, could be taken at once from the scows by the travelers, and laid in place. In the first position, it could not. Considering the proximity to the shore, I think, under ordinary circumstances, this abutment could be built as cheaply in my location as in the other, taking into account all the work. The next important change was in the location of the draw pier, and in the dimensions of the different parts of it. It was narrowed from forty-four to thirty-six feet on top. The object in reducing it was to interfere as little with the flow of the water as possible, and thus be more favorable to navigation. The upper end of the pier—called the upper starling—and rest-wall were separated in General Rodman's plan, the masonry being connected by a wooden frame. I extended the walls of the starling down to connect with the rest-wall. The batter in all my work was one-half of an inch to a foot. General Rodman's was one inch to a foot. The effect of this change of batter was to make all the bases of General Rodman's work having the same top-width as mine, wider than mine, and all of mine that had the same width at the base, in the same ratio broader on top than his. I also changed the form of the starling itself. My location of this starling was in about the same depth of water as General Rodman's—the velocity of the current not quite as great in my case as in his. I calculated that his would contain one thousand three hundred and forty-four cubic yards of masonry, and mine would contain one thousand two hundred and sixty-three. His required a coffer-dam eighty feet by fifty-two feet, and mine a coffer-dam sixty feet by forty feet. The pivot part of the draw I made circular instead of hexagonal, and I made mine solid, though on his plan it was undetermined. I cannot say it was built so, but I so designed it. My pivot was placed in about four feet of water. All the depths mentioned in this place are low-water depths. If General Rodman's design for a pivot had been placed in the same depth, his would have contained one thousand one hundred and eighty-six cubic yards, if hollow, and mine one thousand and ten cubic yards. His coffer dam would have been fifty-six feet square, and mine forty-one feet square, inside. At the place where General Rodman himself designed to place it, to wit: about ten feet low-water depth, it would have contained one thousand six hundred and thirty-four cubic yards. The lower starlings, on both designs, were alike, differing

only in the batter on the outside, and having a shorter diameter to the circle. If placed in the same depth, at four feet, General Rodman's plan would have contained seven hundred and fifty-nine cubic yards, and my plan four hundred and forty-eight cubic yards. The coffer-dam for his work would have to be forty-six feet by twenty-nine feet, inside, and mine forty feet by twenty-five feet. If General Rodman's starling had been placed in the ten-foot depth, it would have contained one thousand and sixty-eight cubic yards. Taking the whole draw pier at my location, his pier contained five hundred and sixty-eight more cubic yards than mine. Placing his at his own location, his would have contained one thousand two hundred and eighty-five cubic yards more than mine. The facilities of building the draw pier in the location I gave it were much greater than in the other case, on account of the shoaler water and gentler current. It was as easy to build this pier in my location as the average of the rest of the work on the masonry of the bridge. The common piers I took of the width on top of seven feet. I presume that is about the width that General Rodman would have taken them, though the width is not marked distinctly on the plan. The upstream starling on my plan had the same angle as on General Rodman's for the cut-water, but I carried it up about six feet higher than he did. Estimating them to stand, on an average, in six feet water, his plans contained three thousand three hundred and thirty-eight cubic yards for all five piers. My quantity was three thousand two hundred and eighty-five cubic yards. The coffer dams were nearly of the same size. The island shore abutment, I suppose, is about the same as General Rodman's, with the exception of the batter, and stands in the same place. The abutments for the railroad banks do not appear to be provided for on General Rodman's drawings, but there could be no question about them, and they would probably not have differed materially from mine, either in amount or facility of construction.

Question. Was the whole period from July 22, 1869, to August 23, 1869, necessarily a loss to the contractors; and how did they employ their time, or any portion of it, during that period?

Answer. It was not necessarily all lost time. All the joints and beds of the stone could be prepared for laying, and arranged in courses, leaving those for the starlings, and those requiring special batter to be done afterward, and the contractors were so engaged. I do not know, personally, to what extent; that was looked after by Major Stickney; they also worked upon their scows, and prepared material for coffer-dams and made general preparations, such as overhauling their traveling machinery, and other work of that kind.

Question. From the time you arrived there, how long during that season were you present at the work?

Answer. I was there constantly, until Sunday, September 26th.

Question. Did the contractors, Harvey & Livesey, at any time before the 15th of September, 1869, signify to you that their contract did not oblige them to make the coffer-dams, and prepare the foun-

dations for piers and abutments, or express to you in any way an understanding on their part that the Government was bound by the contract to execute such preparatory work?

(Foregoing question objected to by counsel for claimants.)

Answer. They did not.

Question. Did they, at any time before the date mentioned in the last question, make any inquiry of you as to preparation by the Government for the construction of coffer-dams?

(Objected to.)

Answer. They did not.

Question. Had the contractors, before the date mentioned, themselves made any preparations for the work of coffer-damming; and, if so, to what extent?

(Objected to.)

Answer. Yes; they had made preparations. They had cut iron rods of lengths suitable to dams, in certain depths of water, and ordered washers and constructed a crib to make slack-water.

Being cross-examined by Enoch Totten, Esq., for claimants, the witness says:

Question. When did you quit the superintendence of the construction of the bridge?

Answer. I think about the last of May, 1870; I have stated that I left there September 26, 1869; I returned about May 1, 1870. I was also in charge of the survey and improvement of the Wisconsin river; survey and improvement of the Mississippi above Rock Island; improvement of the Minnesota river; collection of information on bridging the Mississippi river between St. Paul, Minnesota, and St. Louis, Missouri, and some minor matters. The order sending me to Rock Island made my headquarters at Davenport, but temporarily; they went to St. Paul when I left.

Question. Who was in the immediate and active charge of the work on the bridge on behalf of the Government?

Answer. Major Stickney, United States Engineers, in charge of work on the masonry.

Question. What is the width of the bottom of the draw-pier?

Answer. That would depend upon the depth of the water.

Question. According to your plan, were the upper and lower rests connected with the pivot by cribs or other means?

Answer. They were connected in some such way, yes—or were to be. I dont know who did that work; I think Major Stickney did it.

Question. How much had been done when you left the personal superintendence of the bridge?

(Objected to.)

Answer. The Davenport shore abutment was nearly finished, and they had commenced laying the foundations in the island shore abutment.

Question. Over what particular portion of the river does this bridge pass?

Answer. From the Iowa shore to the island of Rock Island.

Question. How do you obtain your data for the number of cubic yards in your estimates for these piers and abutments?

Answer. I obtain mine by the actual construction. I took Stickney's testimony as to the details of amounts, and then I ascertained by writing directly to Colonel Macomb the actual amounts in the bridge. The dimensions I have given are in accordance with my original designs; the actual amounts as given by Colonel Macomb are about one hundred and thirty-five cubic yards in excess of Major Stickney's details. General Rodman's dimensions I took from the red figures on the drawing furnished me by him. I calculated the quantity myself, adapting myself to the single track laid over the bridge with wagon-road beneath it, the same as my own.

Question. Were the piers and abutments so built by the contractors as to accommodate either a single or double track road, as might be determined upon?

Answer. All that I saw them build were, and I presume they all were; that was the design.

Question. Why do you take the red figures of General Rodman instead of those in black?

Answer. Because I understood from him and all that he did, that that was the kind of piers he intended to build for either a double or single track.

Question. From July 22, 1869, to August 23, 1869, do you know, of your own knowledge, that the contractors did any work about the bridge?

Answer. What I have stated, I know of my own knowledge they did. I know of my own knowledge they made preparations for the coffer-dams, as I stated before. I should think they cut the iron rods some time before the 15th of September. I could not say how long before. These rods could not have been used for anything else about the bridge that I know of.

Second general interrogatory by the commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

G. K. WARREN.

Sworn to and subscribed before me this sixth day of February, 1872.

JNO. CRUIKSHANK,
U. S. Commissioner, Commissioner of the Court of Claims.

Deposition of Amos Stickney, taken at Washington, February 22, 1872.

AMOS STICKNEY, being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Answer. Amos Stickney; twenty-eight years of age; Rock Island, Illinois, for the past year; I have no interest in the claim which is the subject of inquiry; I am not related in any degree to the claimants.

Being interrogated by A. T. Gray, Esq., for the United States:

Question. Since you first came to Rock Island in connection with the Rock Island bridge, as it is called, have you been a superintendent of that work, and are you so now?

Answer. Since the 23d of August, 1869, I have superintended the construction of the substructure of the bridge.

Question. You have before stated the date of your arrival at Rock Island; please to repeat that date, and state how you were occupied from that date until the 23d of August, 1869?

Answer. I arrived at Rock Island on the 20th or 21st July, 1869, under instructions from General Warren to gather all information concerning the bridge, and to attend to the transfer of the work from General Rodman to General Warren, and to act for General Warren in any matter that might need action.

Question. It appears that an order was issued by you on the 22d July, 1869, for the suspension of the work. Please state how far that suspension was carried out: whether it interfered with the operations of contractors; whether it was an absolute suspension, or whether it was simply a suspension of work on the piers?

(Objected to by counsel for complainants.)

Answer. The intention of the order was to stop all contract work, but it was not intended to interfere with preparations for doing the work.

Question. During the suspension occasioned by that order, was there work for the contractors to do in the way of preparation for building the piers and abutments?

Answer. There was work for procuring material, for building coffer-dams, and putting their machinery, boats, &c., in good order for their work.

Question. Did they, during that period, perform any such work of preparation?

Answer. They did something toward getting their machinery in working order, although I believe they did not do a very great amount of work in that way.

Question. Did you see these contractors very often, and how frequently, during the period referred to, from July 22d to August 23d, 1869?

Answer. I saw them, perhaps, three or four times.

Question. Did you have any conversation, when you met them, in relation to the work?

Answer. I had some general conversation.

Question. You have testified heretofore that, on the 23d of August, you communicated to the contractors that the location of the Iowa pier was ready for the contractors to go to work. Did you communicate this verbally, or in writing?

Answer. Both, I think.

Question. Did they, on that occasion, make any suggestions to you that the Government was bound to construct coffer-dams, or to make beds for masonry?

(Objected to by counsel for complainants.)

Answer. I think not.

Question. Had they, within your observation, made any preparations for the building of coffer-dams; and if so, what?

Answer. I cannot say whether on that date they had made preparations for building dams, with the exception of an engine-boat, (a boat with an engine and pile-driver on it,) which they had brought there previous to my coming, but it was about that time they commenced preparations for the dams by building a crib, to serve as a breakwater.

Question. Do you recollect any other work under preparation for a coffer-dam?

Answer. About this time they commenced to construct a dredging machine, which was attached to their engine-boat to procure filling for the walls of the dam.

Question. When did the first suggestion come from them, or from either of them, in relation to the construction of the coffer-dams by the Government, and when was the suggestion first made? Please state all the circumstances.

Answer. The first I ever heard about it was in a conversation with either Mr. Harvey or Mr. Livesey, sometime about the 4th of September, 1869; and I understood, at that time, that he merely expressed an opinion, but made no claim that the United States should do this work.

Question. Did he insist in any way that the United States were obliged to perform that work?

(Objected to by counsel for complainants.)

Answer. Not at that time; I understood he merely expressed the opinion.

Question. During that suspension of work, from July 22, 1869, to August 23, 1869, did Harvey & Livesey, in any conversation with you, state what their loss would be by that stoppage or suspension?

Answer. They did. They informed me that they would lose

twenty-five hundred dollars per month; which information I telegraphed to General Warren.

Question. In the construction of the Iowa main abutment, please to state what delays were made by the contractors, the occasion of those delays, and all the circumstances of the construction of the coffer-dams and preparation for that work.

Answer. The first delay was twenty-three days, in commencing to build the dam. The location was given to them on the 23d of August, 1869; they did not get to work at it until the 15th of September, 1869. They lost twenty-nine days by the flooding of the dam, which need not to have occurred. The water rose about five feet in sixteen days, that is, at the average rate of a little less than four inches a day, which would have required less than twenty-five yards of filling per day to have kept the dam above water.

Question. Please state any particulars as to the structure of this dam, with reference to strength and fitness for its purpose, and any other particulars.

Answer. The thickness of the filling was about four feet and seven-tenths, while the water was between seven and eight feet in depth. The rods for holding the two sides of the dam together were about seven and a half feet apart. The thickness of the filling should have been about seven feet, and the rods at the bottom about five feet apart; but the dam, as it was built, by side bracing, would have stood the pressure of the water, and would have allowed the dam to have been built up.

Question. What was a sufficient time for the building of that dam?

Answer. Five or six days.

Question. How long were they actually engaged in building it?

Answer. About six days.

Question. Do you know of any other delay in the construction of coffer-dams and preparation for building of piers and abutments? If so, please state the facts consecutively.

Answer. They lost seven days in commencing to build the dam for the island abutment; they lost at least ten days in completing that dam; they were eighteen days in building it; they lost thirteen days in commencing and pumping the coffer-dam for pivot masonry. The pumping engine and pump were not needed at the island abutment dam after the 11th June, 1870.

Question. At what time was it practicable to commence working on the island abutment—building the dam for it—and when did they actually commence it?

Answer. It was practicable for them to commence on the 2d of April. They did not commence until the 8th of April.

Question, Had the location been given them on or before the 2d of April?

Answer. The location was determined on the 1st of April, but it was not marked until they were ready to commence the dam.

Question. During that time had you been ready to give them the lines of location, and did they during that time ask you for those lines?

Answer. We had been ready to give them whenever they were ready to receive them.

Question. When was pumping actually commenced at the pivot coffer-dam?

Answer. June 25, 1770.

Question. Can you state any reason for this delay on their part?

Answer. I know of no reason.

Question. Do you know of any other delay?

Answer. They lost five days in construction of the pivot masonry by the breaking of the dam. This resulted from its weakness. They lost seven days at the coffer-dam for pier No. 1, after the dam was completed and before pumping commenced; they lost nine days in the construction of the upper starling of draw-piers by the breaking of the coffer-dam, which resulted from its weakness; they lost seventeen days by the sweeping away of that dam, which was occasioned by negligence in not building up the protections to keep the current of the river from sweeping over it; they lost four days in constructing a dam for pier No. 5; this dam broke down before it was half finished —before any pressure was brought upon it by pumping, and it was then given up; they lost four days in constructing a dam for pier No. 4, having commenced a dam and then abandoned it. They had numerous delays for want of proper and sufficient machinery.

Question. Please state the delays for want of proper and sufficient machinery; and what, in youropinion, the machinery should have been to avoid those delays?

Answer. They had but one engine, and therefore could pump but one dam at a time. They had one small steamboat, which could not have moved material to have carried on two dams at a time. Therefore their greatest need was another pumping engine and pump and another tow-boat, to have carried on the work with dispatch.

Question. Were their coffer-dams, in your judgment, sufficiently strong?

Answer. They were not.

Question. Did the contractors, or either of them, ever consult you in relation to the construction of the coffer-dams or their sufficiency?

Answer. They did not.

Question. Have you ever made any estimates and plans as to the cost of construction of proper coffer-dams for that work?

Answer. I have.

Question. Please state, in detail, what those proper plans would be, and what would be the cost of them?

Answer. A general rule for the thickness of walls in coffer-dams is to allow ten feet thickness of filling for ten feet depth of water, and one foot additional filling for each additional three feet of water. The timbers, sheet-piling, and tie-rods must then have sufficient strength to bear the pressure brought upon them when the water inside is withdrawn. The cost of such a dam for the Davenport abutment would be seven hundred and eighty-one dollars and eighteen cents, ($781.18;) pier No. 1, nine hundred dollars and sixty-four cents, ($900.64,)

about; pier No. 2, sixteen hundred and fourteen dollars and two cents, ($1,614.02;) pier No. 3, sixteen hundred and eighty-one dollars and ninety-three cents, ($1,681.93;) pier No. 4, twenty-nine hundred and eighty-seven dollars and sixty-three cents, ($2.987.63;) pier No. 5, forty-five hundred and eighty-three dollars and sixty-nine cents, ($4,583.69;) upper starling of draw-pier, twenty-two hundred and ninety-four dollars and ninety-two cents, ($2,294.92;) for the pivot masonry, seventeen hundred and sixty-two dollars and sixteen cents, ($1,762.16; for lower staring of draw-pier, sixteen hundred and nineteen dollars and seven cents, ($1,619.07;) the island abutment, twelve hundred and forty-one dollars and forty cents, ($1,241.40;) These are estimates of the cost of the dams proper, and do not include the cost of the protections or pumping. Total cost of constructing coffer-dams, nineteen thousand four hundred and sixty-six dollars and sixty-four cents, ($19,466.64.) These estimates were made giving a depth of water for each coffer-dam equal to the depth of water at these respective dams at the time they were built, and making an allowance in all items, except the filling, for a rise of three feet of water.

Question. Have you also made an estimate of the cost of cribs and breakwaters for these several pieces of work?

Answer. I have estimates in course of preparation now for that not yet completed.

Question. Have you so far made estimates in connection with the other work connected with coffer-dams, as to be able to state an amount which would include the whole cost?

Answer. I have an estimate of what it would cost to build the cribs and breakwaters, as they were built. The whole sum is about four thousand dollars, ($4,000.)

Question. How would the cost of the coffer-dams, built as they were built, compare with the estimates you have made for such as would be sufficient for the purpose?

Answer. The coffer-dams, built as they should be, would have cost more than those built by the contractors.

Question. What is the whole amount of masonry in the piers and abutments, completed?

Answer. It is about 8,595 cubic yards.

Question. What is the amount of masonry in the plan of General Rodman, to which your advertised proposal relates?

Answer. About 9,557 cubic yards.

Question. Suppose that the difference between the two plans was all of it rough work, have you made an estimate of the cost of such work and of the profit on the same? If so, please state it in detail.

Answer. I have. The difference in amount is 962 yards. The cost of putting this in place would be, say, one dollar per yard for receiving and handling, and two dollars per yard for transporting to pier and setting. Then the total cost would be, say, three dollars per yard; the contract price would average $11.65 per yard. The profit would therefore be on 962 yards, $8,321.30. But according to General Rodman's plan, the draw-pier was to have been placed further

out in the river, at a point between the present location of piers Nos. 4 and 4. The depth of water at this place is some six or seven feet deeper than where the pier has been actually built. The cost of the coffer-dam would therefore have been much greater. My estimate of the cost of coffer-dams 4 and 5 is $2,987.63 and $4,583.69. These were for dams whose walls are about two hundred and twenty-eight feet in lengsh. Taking the average of the cost of these two dams, that is $3,785.66, and dividing by 228, we get about $16.50 per lineal foot as a fair estimate of what the dam for General Rodman's draw-pier would have cost. This pier was to have been four hundred and fifty feet in length by forty-four feet in width, which would require a coffer-dam whose walls would be about 1,059 feet in length, and this at $16.50 per foot, would cost $17,473.50. The coffer-dams as the draw-piers was built, should cost $5,676.16. Therefore our plans would save $11,797.34 in coffer-dams, and the contractors would be actually benefitted, in my opinion, to the amount of about $3,000.

Beingcross-examined by Enoch Totten, Esq., for the complainants:

Question. You state that, by the order of July 22, to stop all work, it was only intended to stop contract work, and not preparations. Will you state the difference, in your opinion, between contract work and preparations for contract work?

Answer. Contract work is work that is paid for under the contract, such as setting stone or cutting it. Preparations for that work: such as calking boats, adjusting machinery and moving it into position, and in fact, all preliminaries to proceeding with the actual contract work, are preparations for doing such work.

Question. What moving of machinery had to be done?

Answer. I do not know that I can think of any moving of machinery at present.

Question. Did they have any calking to do on their boats?

Answer. I believe they did.

Question. How much, and on what boats?

Answer. That is something I could not say; I paid no particular attention to it.

Question. Can you swear there was any calking needed on their boats?

Answer. My impression is there was. I do not swear positively to it?

Question. Was not their machinery in good order at that time?

Answer. No, sir.

Question. What was the matter with it?

Answer. They had to fit up a dredging machine on their engine-boat. That is one thing that I remember particularly. I do not know as I remember particularly any other changes in their machinery.

Question. That dredging machine was wanted only for filling coffer-dams, was it not?

Answer. That was all, I believe, it was used for.

Question. Did you explain the meaning of this order of July 22, 1869, to the contractors at the time, as you have tried to explain it now?

Answer. I did not enter into any special explanation, for they asked none; and the wording of the order, if I remember correctly, was that they should stop all work under the contract; and in my conversations with them, I gave them to understand that I was exceedingly sorry for the delay and that is should be as short as possible, and therefore I did not suppose or intend that they should stop making all necessary preparations.

Question. You speak of a crib for a breakwater having been begun by the contractors before the 15th of September. When was this crib built, and what was it for?

Answer. I cannot say positively as to the time it was built. It was about the 15th of September; exactly when it was built I cannot say. It was intended, as I understood Mr Livesey, to be placed above the coffer-dam and filled with stone; but it was given up as being inadequate for the protection of the dam.

Question. When the contractors told you their loss would be $2,500 per month during the stoppage, what did they say that loss would be for?

Answer. The only item of that loss that they told me about was $40 per day for a steamboat, which they said they had chartered at that price, for which they would have to pay whether the boat worked or not.

Question. Did you not know that their loss must have been more than that sum when you telegraphed to Warren?

Answer. I did not know, and had no reason to think so.

Question. Did you ever build or superintend the building of a coffer-dam before this work on this bridge?

Answer. I did not.

Question. Did you ever see a coffer-dam before these?

Answer. I had seen them.

Question. Where and when?

Answer. In Rock Island Rapids and at Rock Island. The exact time I cannot tell.

Question. You say the contractors lost 29 days by the flooding of a dam. Was not that dam flooded by reason of a break in the Moline dams above?

Answer. That was the immediate cause.

Question. How much of a rise did the breaking of those dams cause immediately?

Answer. I cannot say. It could not, however, have exceeded from six to twelve inches.

Question. Why?

Answer. Because the river at Rock Island or at Davenport is four or five times as wide (or more) as the narrowest place in the slough behind the island, through which this water came.

Question. What dam was this, the flooding of which caused 29 days' delay?

Answer the dam for the Iowa abutment.

Question. Don't the fact that the dam was flooded and not washed away, show that it was a good dam?

Answer. Not necessarily; in fact that would be no proof at all in a great many cases.

Question. How high over the top of the dam was the water during this flood?

Answer. At the highest point of the flood, I think, the dam was about one foot under water—not in a very strong current.

Question. Between what dates did this delay of twenty-nine days occur?

Answer. From September 29, 1869, to October 28, 1869.

Question. Did you ever build a coffer-dam, or see one built, in five or six days?

Answer. I saw that very one built in six days.

Question. Who built it?

Answer. Harvey and Livesey; at least it was built by their men.

Question. You say they lost seven days in commencing the island abutment. Between what dates did this delay occur?

Answer. Between the 1st and 8th of April, 1870. On the 8th of April the dam was commenced; on the 11th all that had been put in was taken out. The coffer-dam was not finished until the evening of the 23th of May, I think. From the 18th of April to the 4th of May they did not work at it at all, on account of high water. They were eighteen days in building this dam.

Question when did the dam at the pivot-masonry break, which caused a delay of five days?

Answer. June 26, 1870.

Question. Did you plank your coffer-dams differently from those of the contractors?

Answer. In some cases I did.

Question. Did the contractors build the coffer-dams, cribs, and breakwaters, and make the excavations for such piers and abutments as they constructed?

Answer They did.

Question. How many coffer-dams did you build on this bridge, entirely?

Answer. I built three entire coffer-dams, and about two-thirds of another.

Question. What dams were they?

Answer. Dam for pier No. 3; two dams for pier No. 5, and a portion of the dam for the upper starling of the draw-pier.

Question. How came you to build two dams for No. 5?

Answer. When the first dam at No. 5 was built, it was supposed that it was standing on the solid rock-bed of the river, but it was afterwards found that there existed a bed of large boulders and gravel eight or nine feet in thickness, and the dam was resting up-

on this. In attempting to pump it out, before this was discovered, one side of the dam was undermined and badly broken. Upon discovering the existence of this bed, it being the 14th of December, when the working season was over, this dam was abandoned and another one built next season.

Question. In making your estimate for the cost of Davenport abutment, did you take into account the difficulty of connecting the dam with the rock of the bank?

Answer. There was no difficulty that I knew of.

Question. Was there a gas sewer there to interfere with the connection?

Answer there was a gas sewer there, but it did not interfere with the connection. It interfered with the pumping.

Question. How much did dam No. 5 cost you?

Answer. I don't know what the first one cost, as it was not kept separate from the other work. The second one cost the Government $4,583 69.

Question. Does this include the services of vessels and other machinery used about its construction?

Answer. It is the total cost of the dam.

Question. How much did the cribs and breakwaters cost?

Answer. $772 71; this includes the repairing after an accident caused by a raft. This is in addition to the $4,583 69.

Question. How much did the pumping cost?

Answer. I cannot give that exactly. I can give very near it; $510 for pumping the dam—keeping it pumped while this bed of boulders was being removed—and the masonry building up about twenty-two feet.

Question. How much did it cost to make the excavations for the pier after the water was pumped out?

Answer. About $1,022 97, the amount of excavation being 751 $\frac{8}{100}$ yards.

Question. What was the height of the water above low-water mark during the time you were building this pier?

Answer. The water was from thirteen to fifteen feet in depth. The water was from one to three feet above low-water.

Question. How did you keep your account of the cost of this dam?

Answer. I kept the time of the persons building it, the time of the machinery worked at it, and the cost of the machinery and the materials purchased for the construction.

Question. Did you use any of the materials from the first dam in building this one?

Answer. I did.

Question. Is it counted in this estimate?

Answer. It is.

Question. What did you take into account in estimating the cost of coffer-dams as given by you before?

Answer. I took into account the material used in the dams and the labor on the dams.

Question. Does the cost of building coffer-dams depend in any degree upon the stage of the water?

Answer. The deeper the water the greater the cost of the dam, of course.

Question. At what stage of water did you make these estimates?

Answer. I made the estimate for each dam at the time that dam was built.

Question. Did you make any allowance for accident?

Answer. I did not, with the exception that I put material enough in to give an excess of strength.

Question. How did you arrive at the value of the labor in the dams built by plaintiffs?

Answer. I have never gotten up any such value that I remember.

Question. Then your estimate of the dams built by plaintiffs don't include anything for labor?

Answer. I have never made any estimate of dams built by plaintiffs.

Question. According to the method given by you and from which you have estimated the cost of building dams, how much would it cost to pump the dams out, and keep them pumped out?

Answer. It would cost about $15 a day for an ordinary-sized dam; $15 a day would be ample to do it. That would depend upon whether it was a good dam or a leaky one. If a leaky one, we would have to keep pumping harder.

Question. Is it necessary to keep the pumps going day and night?

Answer. Until the masonry is well started it is; after that it is not.

Question. Does your estimate—$15 a day—include the use of the boat and machinery?

Answer. It does. I will qualify by saying that $15 a day would not pay for the pumping if you had to hire the boat and engine by the day, but it is intended to cover the interest on the money in the machinery and the depreciation.

Question. How much would it cost for coal to run the engine, per day?

Answer. About five dollars.

Question. Can you state how much it would cost to keep the pumps running in the various dams?

Answer. I can give an approximate estimate. For the Davenport abutment, $180; pier No. 1, $180; pier No. 2, $330; pier No. 3, $150; pier No. 4, $300; pier No. 5, $510; upper starling of draw pier, $300; pivot at draw pier, $195; lower starling of draw pier, $150; island main abutment, $180.

Question. How long were the plaintiffs at work on the island main abutment with their pumps?

Answer. They were at work about eleven days besides the time that they were excavating in the solid rock, for which time they were paid as for extra work. They were fourteen days making these excavations.

Question. Is this approximate estimate for pumping based upon the supposition that there were no accidents from floods or otherwise?

Answer. It is.

Question. What would be the cost of the necessary excavation in the bottom of the river after the pumping was done?

Answer. I have only got the actual cost of that in one case, that is at dam No. 5. It was very nearly $1.35 per cubic yard.

Question. What was the depth of pier No. 5 below low water; and how much below your first soundings was that depth?

Answer. The bottom of the pier was about twenty feet below low water; that is about eight feet below the original soundings.

Question. How much stone did you receive after the 7th October, 1870?

(Objected to by counsel for United States, examination-in-chief not having been directed to any such matter.)

Answer. I have not the record with me; I don't know how much.

Question. Did you receive one cubic yard or five thousand? I want your opinion about it.

(Objected to by counsel for United States.)

Answer. I should think somewhere in the neighborhood of a thousand yards. It might be 300 yards more or 300 yards less than that. I never charged my memory with it.

Question. Was there any delay occasioned by the plaintiffs' having to order stones that had been once cut?

Answer. There was some delay in changing stones when they were brought on to the piers, and found to have improper batter.

Question. Would this have been necessary if there had been a full supply of stone delivered in the yard?

Answer. That had nothing to do with it. It was an improper cutting of the batter.

Question. Was this improper cutting occasioned by a failure on the part of the Government agents to furnish proper working plans?

Answer. To the best of my knowledge, it was not. We always tried to give the contractors every facility for cutting their stone properly.

Question. Did you require the stones cut by plaintiffs under Rodman to be altered?

Answer. There was some stone cut before we took charge of the work without the batter, and some of these stones were afterward changed to put into the work. Most of our work was battered work.

Question. What was the difference in the batter in your plans and those of Rodman in the piers and abutments?

Answer. The batter adopted by us in most of the work was one-twenty-fourth. In General Rodman's it was to have been one twelfth. Ours was oue-half-inch in a foot, and his one inch in a foot.

Question. If the plans had been furnished, could not the con

tractors have prepared the starlings out of the stones furnished under Rodman?

They did do it. They cut the starlings of one or two piers in the fall of 1869. That was not particularly out of stone furnished under General Rodman.

Question. Did you alter any of these stones cut by the plaintiffs under Rodman into starlings?

I did alter some of them, but what into I do not know.

Question. Did you make the plaintiffs any allowance for such extra work?

I did not, because I had understood from Lieutenant Butler that the contractors had received no instructions to cut these stones as they did.

Question. How much was this extra work reasonably worth?

Counsel for the United States objects.)

Answer. I have not the slightest idea how much there was of it.

Question. Who made the dry wall or rip-rap masonry of the Iowa abutment?

(Objected to by counsel for the United States.)

Answer. There is no rip-rap wall that is a part of the Iowa abutment. There is a rip-rap wall that sustains the earth approach on the Iowa side. If that is the wall referred to I would say it was built by the Government by day labor.

Question. Why was this not given to the contractors?

Answer. Because, by the terms of the contract, they were to build the piers and abutments only. This dry wall had nothing to do with the piers or abutments.

Question. What office does the Iowa abutment perform?

Answer. It sustains the ends of two spans of the bridge, and it sustains a portion of the earth approach.

Question. What does this dry wall sustain?

Answer. It sustains that portion of the earth approach which is outside of the abutment.

(Counsel for the United States objects to the whole of examination about dry walls.)

Question. Does this dry wall connect with the abutment.?

Answer it does not. It simply abuts up against it at one end?

Question. What connection under Rodman's plan was there between the upper and lower rests and the pivot of the draw-pier?

(Objected to by the counsel for the United States.)

Answer. I believe he intended to have built light walls up to the low-water line.

Question. Was it not a solid wall from the rests to the pivot?

Answer. It was a solid wall, a foot or two thick. I do not remember the details. The plan of this pier, as shown to me by General Rodman, was not a finished plan, and had not been decided on.

Question. What connection is there between the uper and lower rests with the pivot of the draw-pier, as constructed?

(Objected to by counsel for United States.)

Answer. A connection of timber.

Question. Is there no masonry about this connection?

Answer. There is not.

Question. Is there nothing but wood?

Answer. There is no connection of anything but wood. The lower part of the timber cribs, weighted with stone.

Question. Would this pier have been complete without these cribs filled with stone?

Answer. Yes, sir.

Question. What were the cribs put in for?

Answer. They were put in to give a firm footing for the upright timbers which support and brace the outer sheathing.

Question. Why do you not allow the plaintiffs to do this?

Answer. We did not consider it a part of their work, and they never mentioned the matter, as far as I know.

Question. It was rough and inexpensive work, was it not?

Answer. I don't know that it was particularly rough and inexpensive. It certainly was not cabinet work, nor cut stone-work, nor stone-work of any kind.

Question. The principal material in these connections is stone, is it not?

Answer. It is not; it is timber.

Question. What proportion of the material is stone, and what timber?

Answer. There are about 500,000 feet of timber; the amount of stone I don't know.

Question. Did you, or did General Warren, to your knowledge, ever stop to consider the rights of the contractors in your management of this business?

Answer. We did, most certainly. I always attempted, and instructed my assistants to facilitate the work of the contractors as much as possible, and as far as was consistent with our position as guardians of the public interest.

(Counsel for United States objects to all of examination relating to connections between rests, &c.)

Second general interrogatory by the Commissioner:

Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

AMOS STICKNEY,
Captain of Engineers, United States Army.

Sworn to and subscribed before me this twenty-second day of February, 1872.

JNO. CRUIKSHANK,
United States Commissioner, and Commissioner of the Court of Claims.

Deposition of Addison M. Scott, for defendants, taken at Rock Island, Illinois, on the 9th day of April, 1872.

ADDISON M. SCOTT, being duly sworn, deposes as follows:

Interrogatory. Please to state your name, your occupation, your age, your place of residence the past year; if you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Answer. My name is Addison M. Scott; am a civil engineer; twenty-nine years of age; have lived in the city of Rock Island, Illinois, during the past year; I have no interest in the claim, direct or indirect; and am not related to the claimants.

Being interrogated by H. C. Connelly, Esq., for the United States:

Interrogatory. How long have you resided in Rock Island, and to what special work has your time been devoted as a civil engineer since arriving here?

Answer. I have lived here since last week in July, 1869, and have been employed as assistant under Major Stickney, on the Rock Island bridge.

Interrogatory. What length of time have you been in the employ of the United States Government, as civil engineer?

Answer. Over four years.

Interrogatory. Have you, at any time, made an estimate of the cost of dams, breakwaters, and protection cribs, as per plans of Major Stickney, as presented in Exhibit A, hereto attached, and now shown to you, and which I ask may be made a part and parcel of this your deposition?

Answer. I have; and I attach said Exhibit A to this my deposition, and make it a part of the same.

Interrogatory. Please explain fully and specifically said Exhibit A.

Answer. Said Exhibit A is a plan of the coffer-dam, breakwater, and protection cribs, as designed by Major Stickney for pier No. 1, and is also a general plan for all the dams and breakwaters required.

Interrogatory. Have you, at any time, made an estimate of the entire cost of pumping the water out of the coffer-dams constructed in the progress of the erection of the bridge?

Answer. I have.

Interrogatory. Will you give us the estimated cost of said work so made in detail?

Answer. I estimate the entire cost of pumping to be $3,082.00, beginning with the Davenport abutment, viz:

Davenport abutment	$216 00
Pier No. 1	165 00
Pier No. 2	504 00
Pier No. 3	174 00

Pier No. 4	$330 00
Pier No. 5	622 00
Upper rest for the draw-pier	411 00
Pivot pier	270 00
Lower rest of draw	180 00
Rock Island abutment	210 00
Aggregate	$3,082 00

Interrogatory. Have you made an estimated cost of the excavating for the foundation of said piers?

Answer. I have.

Interrogatory. Please give the same in detail?

Answer.

Davenport Railroad abutment, 298 6/8 yards, at 40 cents per yard	$119 44
Davenport main abutment, 105 2/8 yards, at 80 cents per yard	84 16
Pier No. 2, 125 yards, at $2.00 per yard	250 00
Pier No. 4, 50 yards, at $2.00 per yard	100 00
Pier No. 5, 645 yards, at $1.35 per yard	870 75
Upper rest of draw, 51 7/8 yards, at $1.50 per yard	77 55
Rock Island Railroad abutment, 147 yards, at $.150 per yard	220 00
Aggregate	$1,722 40

Interrogatory. Have you made an estimated cost of preparing the beds of said piers? If yea, please give the same in detail.

Answer. I have, viz:

Davenport Railroad abutment, estimated cost	$46 00
Davenport main abutment	69 00
Pier No. 1	46 00
Pier No. 2	69 00
Pier No. 3	23 00
Pier No. 4	46 00
Pier No. 5	46 00
Upper Rest	92 00
Pivot-pier	46 00
Lower Rest	23 00
The Island Railroad abutment	23 00
Aggregate	$529 00

Interrogatory. I understand that the foregoing estimates are based on figures which, in your opinion, should have been the actual cost of said work or works?

Answer. Yes; these estimates were made to the best of my knowledge as to what the work should have cost.

Interrogatory. Have you made an estimated cost of traveler-frames standing at unfinished piers and abutments on the 8th day of October, 1870? If yea, give the same in detail.

Answer. I have, viz:

At the Davenport Railroad abutment	$425 00
At pier No. 2	420 00
At pier No. 4, (traveler-frame incomplete)	160 00
At Rock Island Railroad abutment	175 00
Aggregate	1,180 00

Interrogatory. Look at the drrawing now shown you, marked Exhibit C; attach it to this your deposition, and make it a part thereof.

Answer. I have marked it Exhibit C, and have attached it to this my deposition, and make it a part of the same.

Interrogatory. Please explain said Exhibit C in detail.

Answer. Exhibit C is a drawing of the traveler-frame and travelers used on the island by the claimants herein, and a drawing of their traveler-frame built at pier No. 2. It also shows the jennies and crabs used by the claimants for handling stone.

Interrogatory. You have already answered that you have made an estimate of the cost of dams, breakwaters, and protection-cribs, as per plans of Major Stickney in Exhibit A. Please give said estimated cost in detail.

Answer. Beginning at the Davenport abutment:

Davenport main abutment	$ 781 18
Pier No. 1	1,446 31
Pier No. 2	2,363 83
Pier No. 3	2,438 88
Pier No. 4	3,933 28
Pier No. 5	5,390 32
Upper rest of draw	3,107 92
Pivot-pier	2,187 92
Lower rest of draw	2,081 73
Island main abutment	1,348 17
Aggregate	$25,079 54

Interrogatory. Look at the drawing now shown you; mark it Exhibit B, attach it to this your deposition, and make it a part of the same?

Answer. I have marked it Exhibit B, have attached it to this my deposition, and make it a part thereof.

Interrogatory. Please explain in detail what said Exhibit B is designated to show or represent.

Answer. Exhibit B represents a section of each dam built by the claimants, and compares the same with a section of the plan as pro-

posed by Major Stickney, for each pier and abutment; it is also a partial history of the dams built by the claimants.

Interrogatory. Did you or did you not frequently see the machinery used by claimants in the construction of said piers and abutments?

Answer. I did frequently see their machinery.

Interrogatory. Can you give an estimate of the loss sustained by said claimants on said machinery by reason of the Government taking charge of the work; if yea, please give said estimate as fully as possible.

Answer. In my opinion they suffered no loss on machinery other than they would have suffered if they had finished the work.

Interrogatory. Did you at any time have a conversation with Mr. Livesey, one of the claimants herein, with reference to said claimants' erecting the dams requisite in the construction of said piers and abutments? If yea, state when and where you had such conversation, and give the same as fully as possible.

Answer. I did have a conversation with Mr. Livesey some time in the spring of 1870 with regard to the coffer-dams. In this conversation he said their (the claimants') intention was to build these dams until they found that if they did so they were obliged to make the excavations and prepare the beds. After they discovered this, they concluded to deny the intention of building the coffer-dams. He also said they had no intention, when they took the contract, of making the excavations or preparing the beds.

Being cross-examined by James W. Harvey, for claimants, witness says:

Cross-interrogatory. Please give the depth of water at each pier when you located the piers, and the date of location.

(Objected to as immaterial and irrelevant, and as not being cross-examination.)

Answer. I cannot give the exact date of each location, and but an approximate depth of water at each pier. Beginning at the Davenport abutment, the dam was commenced September 15, 1869; the deepest water at that place then was about seven feet, the gauge reading about seven feet above low-water mark. At pier No. 1, the dam was commenced July 15, 1870; the deepest water was about seven feet, the gauge reading 2 and $\frac{2}{10}$ feet above low-water mark. At pier No. 2, the dam was begun August 23, 1870; gauge $1\frac{6}{10}$ feet above low water. At pier No. 4, dam was commenced September 19, 1870, gauge reading $7\frac{3}{10}$ feet above low water. At pier No. 3, dam was commenced October 18, 1870; gauge $4\frac{3}{10}$ feet above low water. At pier No. 5, dam was commenced July 9, 1871, (meaning last dam built at said pier,) gauge reading $3\frac{4}{10}$ feet above low water. The first dam built at pier No. 5, after the Government took charge of the work, was begun October 12, 1870; gauge $4\frac{8}{10}$ feet above low-water mark. First dam built at upper rest of draw, built by claimants, commenced July 28, 1870; gauge $2\frac{3}{10}$ feet above low water. Second dam at upper rest

for draw was commenced by claimants and finished by Government, was begun October 5, 1870, gauge reading $4\frac{7}{10}$ feet above low water. At pivot-pier, begun June 1, 1870, gauge $7\frac{7}{10}$ feet above low water. At lower rest of draw, dam commenced June 21, 1870; gauge $5\frac{3}{10}$ above low water. At Rock Island main abutment dam commenced April 8, 1870; gauge $9\frac{2}{10}$ feet above low water.

Cross-interrogatory. Will you give me the depth below low water of your first soundings and the extra depth claimants and Government had to go through gravel and sand to reach the top of the rock?

(Objected to by counsel for defendants.)

Answer. Beginning with the Davenport abutment, the lowest part of the foundation of this abutment is at low water. There was $1\frac{1}{2}$ to 2 feet of earth and gravel and loose rock removed in some places. The excavation was generally less than this in depth. At pier No. 1, the foundation is five feet below low water. There was no excavation necessary here, there being no gravel deposited on the bed rock. At pier No. 2, the natural river bed was about $8\frac{1}{2}$ feet below low water. From $3\frac{1}{2}$ to 4 feet of gravel was removed at this point. At pier No. 3 the foundation of this pier is seven feet below low water. No excavation was made, there being no gravel deposited on the bed rock. At pier No. 4, the natural river bed was about $9\frac{1}{2}$ feet below low-water mark. At the upper end of this pier nearly three feet of gravel was removed. At the lower end there was less than six inches. At pier No. 5, the river bed is twelve feet below low-water mark. From six to seven feet of gravel was removed at this place in order to place the foundation on solid rock. The upper rest of the draw: On the island side the foundation of this pier is from $4\frac{1}{2}$ to 8 feet below low water. There was no gravel deposited on this side of the pier. The foundation on the Davenport side is from $10\frac{1}{2}$ to 12 feet below low water. There was 1 to $1\frac{1}{4}$ feet of gravel deposited on this side in places. At pivot-pier, the foundation is $4\frac{1}{2}$ feet below low water. No gravel was found here. At lower rest of draw, the depth is from $5\frac{1}{2}$ to 6 feet below low water. No excavation was necessary here. At the island abutment, the lowest point of the natural surface was about low-water mark. An excavation was made here in the solid rock about five feet deep, making the foundation of this abutment five feet below low water. This excavation was necessary in order to give the requisite depth in the draw-channel, and the claimants were paid extra for making this excavation.

Cross-interrogatory. You say that the first location of pier No. 5 was October 12, 1870; did you not locate it some months before then, and what was the depth of water?

Answer. I did not mean to state that the first location was made October 12, 1870; this is the date when the first dam built by the Government at this place was begun. Some time before this, I think in August, 1870, I gave the claimants the location of this dam; I

do not know the exact date, and therefore cannot give the guage reading when the location was given them.

Cross-interrogatory. What was the width of the first dam you framed at No. 5 pier?

(Objected to.)

Answer. I do not know; the dimensions of this dam were not kept.

Cross-interrogatory. Was it a foot wide?

Answer. It was more than a foot wide; to the best of my recollection, this dam was somewhere from 18 to 20 feet in the clear.

Cross-interrogatory. Will you swear it was 18 feet?

Answer. I will not be positive about the width.

Cross-interrogatory. Can you tell me the width of the inside frame of the dam that was commenced July 9, 1871?

Answer. It was 32 feet in the clear.

Cross-interrogatory. Do you know the reason why they made them so much wider the second time?

Answer. The reason that the first dam was not made wider was that the officers were unaware of the gravel deposited on the rock at this point, and the second dam was made wider so that the excavation necessary to reach solid rock could be made.

Cross-interrogatory. Could the solid rock have been reached in the first dam so that they could properly have laid the foundation of the pier?

Answer. Probably not; at least it would have been difficult.

Cross-interrogatory. What was the cost of this dam and expenses incurred with it in 1870, to the best of your knowledge?

(Objected to.)

Answer. I do not know anything about the cost of this dam.

Cross-interrogatory. Would it have cost $10,000?

(Objected to.)

Answer. In my judgment, the cost could not have been much over half the sum last above mentioned.

Cross-interrogatory. Will you swear that it did not cost the Government $10,000?

(Objected to.)

Answer. I cannot state more definitely in regard to the cost of this dam than I have done.

Cross-interrogatory. Are you a practical engineer?

Answer. I have had four or five years practical experience in engineering.

Cross-interrogatory. Is it not practicable in taking soundings in rivers or deep water, to find out by probing or otherwise the solid rock or solid bottom?

(Objected to.)

Answer. It is, except in very deep water.

Cross-interrogatory. In what depth of water is it not practicable?

Answer. The swiftness of the current would have something to do with the practicability of finding the nature of the bottom.

Here at this point there is no place so deep but that the nature of the bottom could be ascertained.

Cross-interrogatory. Then the cause of the first failure of the dam would arise from the negligence or fault of the engineer in charge of the work?

Answer. I do not think in this case it could be called the negligence or even the fault of the engineers.

Cross-interrogatory. Why not?

Answer. The general surface of the river here, particularly on the site of this bridge, is solid rock; the gravel deposits that were found in the two or three places were merely holes, that had been filled up, in the rock-bed of the river; they extended over but a small surface, and being very hard in their nature would not be liable to be discovered by the engineers in making their soundings.

Cross-interrogatory. Does not the sand and gravel and loose rock, to the depth of six or seven feet, extend over the whole surface of the bottom of this pier?

Answer. It does.

Cross-interrogatory. Was this the first discovery of sand and loose rock and gravel on the top of the rock-bed of the river?

Answer. It was not; we had already found the gravel deposited at piers No. 2 and 4, as I have stated, but pier No. 5 being located directly in the channel of the river, the gravel deposit here was quite unlooked for.

Cross-interrogatory. Do I understand the cause of the failure of the first dam at pier No. 5, was on account of the deposit of this loose sand, gravel, and rock?

Answer. But for this deposit the first dam would have answered the purpose, as it was pumped out to the natural bed of the river.

Cross-interrogatory. Then the deposit of this sand and rock was the cause of the failure?

Answer. It was.

Cross interrogatory. In your estimate of the dams what did you allow for rope and anchors?

Answer. No allowance was made; these things would be part of the outfit necessary to begin such a job.

Cross-interrogatory. How long does a rope exposed to the sun and water last?

Answer. I do not know.

Cross-interrogatory. What did you, in your estimate for pier No. 2, allow for the difficulty of going through the extra depth of sand and gravel?

Answer. I made an estimate of the cost of removing this gravel, and also, in the estimate for pumping, considered the extra time it would take to make the excavation.

Cross-interrogatory. Was your estimate made of what it did cost, or of what it ought to have cost?

Answer. Except at pier No. 5, the estimate was made upon what

it ought to have cost. We had no means of finding the exact cost of these excavations except at pier No. 5.

Cross-interrogatory. The contractors not knowing the deposit of sand and gravel at pier No. 2, but expecting that the soundings given by the engineers were at the extreme depth, could not have foreseen and prepared for doing this extra work in a practical manner, could they?

Answer. No particular preparation was necessary to build these inside dams except at pier No. 5, where the excavation was so deep that the main dam had to be built wider; at pier No. 2 the dam built answered the purpose, though the excavation could have been made easier if the main dam had been four or five feet wider.

Cross-interrogatory. What per cent. of waste of sand did you allow in your estimate of the filling of the dam?

Answer. The price per yard was figured at seventy-five cents—about one-quarter more than the real cost.

Interrogatory. How do you arrive at the cost?

Answer. This was an estimate made, to the best of my knowledge, upon the real cost of the filling.

Interrogatory. Do you consider yourself competent to make a just estimate of the cost?

Answer. I do.

Interrogatory. Where did you get your experience?

Answer. All the experience I have had at this kind of work I have got in my connection with the work on this bridge.

Interrogatory. Then you have never employed a man, or taken a contract, or had charge of any work of the kind before?

Answer. I have not.

Interrogatory. What per cent. did you allow for the loss of timber or plank, iron rods and nails, tools, &c., by swell caused by steamers up and down the river, rafts running into you, disengaging your work, in your estimate?

Answer. This estimate does not cover accidents.

Interrogatory. What did you allow, in your estimate, for banking up outside the dam, and extra filling for leakage which naturally arose?

Answer. The 25 per cent. spoken of above is intended to cover all extra filling required.

Interrogatory. Did you make any calculations at all for outside banking up and leakage?

Answer. No; not particularly for either one of these items.

Interrogatory. In your estimate of the excavations of the Iowa main abutment, could you have taken out all that tar, slush, and mud escaping from the gas-house, for the estimate you have made?

Answer. I think my estimate for the excavation at this abutment a liberal one.

Interrogatory. You say you have made an estimate of the cost of pumping a dam; what would a suitable boat, engine, and boiler, and pumps cost for this work?

Answer. In my estimate I considered the machinery necessary to do the work on hand, and the estimate is intended to cover the real cost, together with loss on machinery by wear and breakage. A pump ready for use would cost about $200. A stationary engine and boat might be estimated at from $1,200 to $1,400.

Interrogatory. Did you ever buy a boat?

Answer. No, sir; I never did.

Interrogatory. Did you ever buy an engine and boiler?

Answer. No; I never did.

Interrogatory. Did you ever have the fitting up of a pump with its gearing for such a purpose as these works?

Answer. No; but I know very nearly what the pumps used on this work cost.

Interrogatory. Will you swear you can fit up a pump with all the necessary gearing for $300?

Answer. In my judgment, the cost of a six inch pump of the pattern used on this work, with frame, shafting, and belting complete, will come under $225.

Interrogatory. What amount of coal did you estimate that it would consume, per day, in pumping the dam; and the cost, per bushel, of such?

Answer. I estimated between 40 and 50 bushels of coal per day, at 12 cents per bushel.

Interrogatory. You did not take into account the expense of getting the coal from the wharf to the dams, did you?

Answer. I thought this item, when done by the steamboat necessarily employed on such a job, would amount to very little, as it could be done by the steamboat and the steamboat-men when they were not otherwise employed.

Interrogatory. Does not a steamboat burn more fuel when she is at work than when she is lying idle?

Answer. It does.

Interrogatory. You stated that we sustained no more loss in our machinery than if we had finished our work. Would we not have had the profits of our work if we had been allowed to complete the same; then could we not sustain the loss in the depreciated value of the machinery?

(Objected to.)

Answer. I do not understand the question. In my former answer I referred to the loss on machinery only, and did not take into account anything else.

Interrogatory. Do you swear that the space between the plank in wall of dam was not more than seven feet eight and one-half inches in the first dam at the upper rest of draw?

Answer. I took and recorded the dimensions of this dam either when it was building or after it was built, and the sections shown of it on Exhibit B properly represent it, to the best of my belief.

Interrogatory. Do you swear that was the size on all sides of the dam?

Answer. To the best of my knowledge, it is.

Interrogatory. You state that the Iowa main abutment is only 4 feet 8½ inches; do you include all around that dam to be of that size?

Answer. I do.

Interrogatory. You say the plan marked Exhibit A, is the kind of dam that would do for all the piers. What is the proper principle of building dams?

Answer. Exhibit A is really a plan for pier No. 1 only; it is a general plan also, as far as the arrangement of breakwaters and protection-cribs are concerned, for all the piers and abutments of the bridge. A coffer-dam must be made wide enough to support itself against the head of water on the outside after it is pumped out; the timber, planking, and tire-rods must be strong enough to support the filling. As regards the width of the filling, the width of the dam should equal the head of water it is required to withstand, up to about ten feet; deeper than this, the dam should be increased in width in the proportion of at least one foot for each additional three feet of water.

Interrogatory. In conversation with Mr. Livesey with regard to our liability to build coffer-dam, was any one present besides you and Mr. Livesey?

Answer. No.

Interrogatory. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I know of no other matter.

ADDISON M. SCOTT.

Sworn to and subscribed before me this 9th day of April, A. D. 1872.

EDWARD D. SWEENEY,
U. S. Commissioner.

Deposition of H. P. Jones, for defendants, taken at Rock Island, Illinois, on the 10th day of April, 1872.

H. P. JONES, being duly sworn, deposes as follows:

First general interrogatory by the commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and if any what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants.

Answer. My name is H. P. Jones; I am a carpenter and joiner; forty-six years of age; resided in Davenport, Iowa, during the last year; no interest, direct or indirect, in claim, and not related to either claimant.

Being interrogated by H. C. Connelly, Esq., for the United States, the witness says:

Question. How long have you followed the business of carpenter and joiner?

Answer. Some 25 years, more or less.

Question. By whom have you been employed at that business during your residence at this point?

Answer. As far as working in wood, I have been employed by several persons, and by Harvey & Livesey, the claimants; also by the United States Government, at the bridge at this point.

Question. On what work or works were you particularly employed whilst in the employ of the said claimants?

Answer. I was employed in repairing their broken machinery, and on new work, building boats.

Question. Did you or did you not build for said claimants flat-boats; if yea, when and how many?

Answer. I did. I built four boats, two of which were flat-boats; then I built one what was termed a spud-boat; the other one was used as a tender. I also built, I believe it was, three other small flat-boats.

Question. William A. Wheeler, a witness called in behalf of claimants, testifies to the value of one steamboat, "Oriel," one spud-boat, six flat-boats, and two pumps complete, which testimony is found on pages 286 and 287 of the printed evidence of said claimants, to be used in said court in this case. Please state who built the said spud-boat mentioned as an item in said account.

Answer. I built it; that is, superintended it for claimants.

Question. What did the building of said spud-boat cost?

Answer. It cost about $430, I think.

Question. In said Wheeler's testimony, found on said page 286, as above mentioned, I find an item of six flat-boats. Did you build any of said flat-boats; if yea, how many, and for whom?

Answer. I built two of the large ones for claimants. I also built one called a tender, and three small flat-boats, all for claimants.

Question. What was the cost of each?

Answer. The two large boats, about $425 apiece. The tender cost about $90; the three small boats, $30 apiece.

Question. There are two pumps complete mentioned in said Wheeler's evidence as an item, on page 287. Who built those pumps, and for whom were they built?

Answer. I built them, for claimants.

Question. What did each cost?

Answer. About $200 each; that is, without the belting.

Question. In said Wheeler's evidence, on said page 286, there appears an item of six travelers and frames. Did you build any of them; if yea, how many?

Answer. I built one for claimants.

Question. How much did it cost?

Answer. About $300.

Question. In size, how did that one compare with the other five, and cost?

Answer. It was some larger; the difference in cost, about $25 more than the others.

Question. Do you know the steamboat Oriel, mentioned in said Wheeler's deposition, found on said page 286?

Answer. I do.

Question. Please state what you know with reference to its value.

Answer. Nothing, of my own knowledge.

Question. Who told you what you know as to its value?

(Objected to by claimants.)

Answer. Mr. Dixon, who claimed to be owner of the boat.

Question. Please state fully the conversation you had with the said Dixon, who claimed to own the boat, as to the value of the same?

Answer. Mr. Dixon, who was captain of the boat, and had charge of her, said to me the boat cost him $1,800.

Question. When and where did this conversation occur?

Answer. On the boat, I think. It was about latter part of April, 1870, when I was doing work on the boat.

Question. In said Wheeler's deposition, on said page 286, is an item for pump-boat, with engine, boiler, and apparatus. Please give the valuation thereof, if you can?

Answer. I am not prepared to do so.

Being cross-examined by James W. Harvey, for claimants, the witness says:

Question. Mr. Jones, you state that you built the pumps. What do I understand by building the pumps; what does it include?

Answer. All I built about the pumps was building the frames around them, and the horizontal frames; that includes putting them in running order.

Question. You mean to say that you fitted the wood-work to the pumps and gearing?

Answer. Yes, sir.

Question. Do you know what the shafting of those pumps cost?

Answer. Not at the present time.

Question. You say that you built travelers; what do I understand by that?

Answer. That was framing the wood-work to the iron-work. I only built one.

Question. Do you know what the iron-work of those cost?

Answer. No, sir.

Question. You have been asked as to the cost of several items in William A. Wheeler's testimony; what would the steamboat Oriel, engine, and boiler cost?

Answer. I can't tell.

Question. You say that you built two large flat-boats. In what capacity were you employed on them; did you buy the lumber, nails, or iron and bolts, oakum, and pitch; and how do you arrive at the cost of said boats?

Answer. The cost of the material is what I ascertained to be the price at the time; the work is what I would be willing to do that job for as I did those boats. I was employed by claimants by the day.

Question. Can you give me the number of pounds of iron used in those boats?

Answer. No, sir.

Question. There was iron used in them, was there not?

Answer. Yes, sir.

Question. Can you give me the number of pounds of nails used in those boats?

Answer. No, sir.

Question. Can you give me the number of feet of lumber used in those boats?

Answer. I have not the figures now.

Question. In the testimony of William A. Wheeler, on pages 286 and 287, do you see an item of those three small boats that you spoke of in your direct examination?

Answer. I do not see an item of those three small boats that I had reference to.

Question. You say you were employed in repairing broken machinery. Please state what kind of machinery?

Answer. I helped repair broken traveler, and I believe a broken jenny?

Question. Were you not a great deal of the time repairing wheelbarrows?

Answer. The wheelbarrows came along in the routine of business, the same as other work.

Question. Were you not a great deal of the time repairing wheelbarrows?

Answer. I was some time.

Question. At the time of your conversation with Dickson, in relation to the steamboat Oriel, did you believe him to be owner of the said boat?

Answer. In my own mind, I did not.

Re-direct examination by H. C. Connelly, for defendant:

Question. Look in the bill of items, incorporated in the said Wheeler's deposition, on said pages 286 and 287, and also at the bill of items incorporated in George C. Russell's deposition found on pages 313 and 314 of said claimant's testimony to be used in said court; and state, if you please, what articles mentioned, in each bill of items aforesaid, were not used by the claimants herein on the said work.

Answer. I do not see anything but what was used in part.

Question. Can you swear that each and every item mentioned in depositions alluded to in the foregoing interrogatory, was used by said claimants on said work?

Answer. I cannot.

Question by Commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. No; I believe not.

H. P. JONES.

Subscribed and sworn to before me this 10th day of April, A. D. 1872.

EDWARD D. SWEENEY,
United States Commissioner.

Deposition of Sereno Powars, for defendants, taken at Rock Island, Illinois, on the 10th day of April, 1872.

SERENO POWARS, being first duly sworn, deposes as follows:

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you had any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Answer. My name is Sereno Powars; clerk in the United States engineer's office, in city of Rock Island; am fifty-two years of age; have lived in city of Rock Island, Illinois, during the past year; have no interest in said claim; and am no ways related to claimants.

Being interrogated by H. C. Connelly, Esq., for the United States:

Question. How long have you been filling the said position of clerk?

Answer. Between two and three years.

Question. As such clerk, what are your duties in said office?

Answer. To keep account of the expenditures for the construction of a substructure of the Rock Island bridge.

Question. Have you or have you not access to all the vouchers, files, or other official papers kept in said office, relating to the construction of the said bridge and all works connected with it?

Answer. I have.

Question. Look at the paper now shown you, mark it, attach it to this your deposition, and make it a part of the same, and state what it purports to represent in detail?

Answer. The paper is now before me. I have marked it Exhibit A; have attached it to this my deposition, and make it a part of the same. This paper is a copy of the amount of the vouchers. The copies of the originals are filed in the office of Colonel Macomb. It is an exhibit of the account as it stands in the office of the United States engineers, at Rock Island, between Messrs. Harvey & Livesey, contractors for the construction of the piers and abutments of Rock Island bridge, and the United States.

Question. Please state, according to said Exhibit A, how much the said claimants were paid by the United States?

Answer. There was paid to them, directly, fifty-five thousand four hundred and eighty and $\frac{18}{100}$ dollars.

Question. Please state the amount paid to other parties, according to said Exhibit A, for work done which should have been performed by the said claimants under their contract?

Answer. Eighty-six thousand nine hundred and seventy-six and $\frac{99}{100}$ (86,976.99) dollars.

Question. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not, except that one copy of each voucher was sent to Washington, where it is now on file in the proper department.

SERENO POWARS.

Sworn to and subscribed before me this 10th day of April, A. D. 1872.

EDWARD SWEENEY,
United States Commissioner.

EXHIBIT A.—S. POWARS.

Messrs. Harvey & Livesey, contractors for the construction of the piers and abutments of the Rock Island bridge, in account with the United States.

DR.

1869.				
October	4.	To cash paid them as per voucher No. 87, 4th q'r, 1869 . .	$9,010 75	
December	30.	To cash paid them as per voucher No. 88, " " " . .	5,405 40	
1870.				
May	31.	To cash paid them as per voucher No. 10, 2d q'r, 1870. . .	3,585 50	
June	30.	To cash paid them as per voucher No. 16, " " " . . .	7,527 86	
July	31.	To cash paid them as per voucher No. 17, 3d " " " . . .	15,367 25	
August	31.	To cash paid them as per voucher No. 19, " " " . . .	5,700 97	
Sept.	30.	To cash paid them as per voucher No. 30, " " " . . .	5,475 73	
October	20.	To cash paid them as per voucher No. 1, 4th " " . . .	44 55	
"	"	To cash paid them as per voucher No. 2, " " " . . .	1,897 97	
				$54,105 98
		To the amount paid by the United States for completing the piers and abutments, after taking the work from the contractors, as per vouchers.		$86,653 24
Sept.	30.	To cash paid them for extra work, as per vo. No. 13, 3d qr. 1870: For dressing 1,559 sup. feet of stone for abutment, at 75 c. per foot	1,169 20	
October	20.	To cash paid them for extra work, vo. No. 4, 4th qr. 1870: For dressing and setting stone.	205 00	
		For 259 cubic yards of stone spawl, used in filling crib protections, at $1.25 per c. y'd.	323 75	
				1,697 95
				142,457 17
				108,775 82
		Balance due to the United States		$33,681 35

CR.

1871.				
		For 2,761.87 cubic yards of stone, laid in draw pier, at $13 per c. y'd	35,904 31	
		For 5,832.94 cubic yards of stone, laid in other piers and abutments, at $11 per c. y'd.	64,162 34	
				$100,066 65

For 3,152.77 square feet of drafted stone in railroad abutment, at 75 c. per sq. foot	2,364 58	
For 363.35 square feet of rough-dressed stone in lower corner of Iowa abutment, at 40 c. per sq. foot	145 34	
For dressing monument stones and office specimen	12 00	
		2,521 92
		102,588 57
For cost of constructing a second coffer-dam for pier No. 5, and removing first dam		6,187 25
Total		108,775 82

(Indorsed.) Account of Harvey & Livesey, contractors for construction of piers and abutments, Rock Island bridge. Edward D. Sweeney, U. S. Com.

Deposition of L. S. Davies, for defendant, taken at Rock Island, Illinois, on the 11th day of April, 1872.

L. S. DAVIES, being first duly sworn, deposes as follows:

First general interrogatory by the Commissioner: Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and if any, what, interest, direct and indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant?

Answer. Lodwick S. Davies; am a lumber manufacturer; twenty-nine years of age; have lived in Davenport, Iowa, during the past year; I have no interest, and am not related to claimants.

Being interrogated by H. C. Connelly, for United States, witness says:

Question. Please state if you were present at any time, and when and where, at the opening of bids for building the rail and wagon road bridge between the island of Rock Island, Illinois, and the city of Davenport, Iowa?

Answer. I was. It was during the month of May, 1869, and at General Rodman's office, on island of Rock Island.

Question. Who was present when said bids were opened?

Answer. I remember as present General Rodman, Mr. Harvey and Mr. Livesey, the claimants herein; John L. Davies, and myself.

Question. Can you state whose bids were then and there opened?

Answer. There were two: one by Reynolds, Saulpaugh & Co., and one by Harvey & Livesey.

Please state, as nearly as you can, what conversation took place between General Rodman, representing the Government, and the said Harvey & Livesey, claimants herein.

Answer. After reading the bids, General Rodman remarked something to this effect: That the bid of Reynolds, Saulpaugh & Co. was high; and that their bid, referring to the claimants, was very low; and he asked them if they understood what they were bid-

ding on, or understood their business, and whether their bondsmen knew? They answered that they did.

Question. Please state what occurred then and there with reference to the erection of the coffer-dams requisite in the construction of said bridge.

Answer. From the conversation held there I got the impression that the claimants were to build and furnish the material for coffer-dams; and, upon their leaving the room, I followed them out upon the walk in front of the office, and requested Mr. Harvey that when he got ready to buy his lumber for coffer-dams, to give us a call He said that he would.

Question. Did he ever call, as he agreed to?

Answer. I was informed at our office that he had been there for the purpose of buying lumber, but I did not see him.

Cross-examined by James W. Harvey, for claimants:

Question. What time of the year was it that I called at your office?

Answer. I can't tell now. My recollection of it is that it was in the later part of summer of 1869, or the fall of 1869.

Question. Did you hear General Rodman remark that they would have to figure some, or words to that effect, before he decided that we (claimants) were the lowest bidders?

Answer. My recollection of it is that General Rodman said that he would look over the bids again, and let them (the claimants) know in a few days.

Question. Were you present at the signing of the contract?

(Objected to.)

Answer. I was not.

Question. Are you acquainted with the wording and meaning of a contract?

(Objected to.)

Answer. I am.

Question. Does not a contract generally specify what is contracted to be done?

(Objected to.)

Answer. My experience is that it depends a good deal upon the man that writes it.

Question. You stated in your direct examination that there were only two bids for this work. Was that all?

Answer. My recollection is, that there were only two parties bidding?

Re-direct, by H. C. Connelly, for United States:

Question. At the time and place the bids were opened, was it difficult, or was it not, by glancing at the bids, to decide who was the lowest bidder?

Answer. My impression was, from hearing the bids read at that time, that the claimants were considerably the lowest bidders.

Re-cross-examination by J. W. Harvey, for claimants:

Question. Did you see those bids, or did you make any figures or calculations on them?

Answer. I heard what purported to be the bids read, and the only calculation I made was the difference in amount specified for certain class of work, in which I at the time thought there was a very great difference.

Question. Please state the amounts, as to the best of your recollection, of the different classes of work specified in those bids?

Answer. My recollection is, that the bid of Reynolds, Saulpaugh, & Co., was about fifty per cent. higher than the bid of claimants. I do not know what question means as to classes of work.

Question. Was there more than one class of work bid for at that time?

Answer. My recollection is, that Reynolds, Saulpaugh & Co. bid for work complete, and for work not including coffer-dams, and that the bid of Harvey and Livesey, as I recollect it, was for the work complete.

Question by commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

L. S. DAVIES.

Sworn and subscribed to before me, this 11th day of April, A. D 1872.

EDWARD D. SWEENY,
United States Commissioner.

Deposition of Newton Flagg, for defendants, taken at Rock Island, Illinois, on the 16th day of April, 1872.

NEWTON FLAGG, being duly sworn, deposes as follows:

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimants?

Answer. My name is Newton Flagg; I am a pork-packer; am fifty-three years of age; resided at Quincy, Illinois, during last year; have no interest in said claim, and not related to either of claimants.

Being interrogated by H. C. Connelly, Esquire, for the United States, the witness says:

Question. Have you ever had any experience as a contractor in the erection of bridge or bridges across the Mississippi river; if yea, when and where?

Answer. Yes, I have; at Quincy, Illinois, and at Hannibal, Missouri, in the years 1867, 1868, 1869, and 1870.

Question. Have you or have you not a competent knowledge of the value of boats, tools, and machinery, used by contractors in the construction of a bridge or bridges across the Mississippi River?

Answer. I think I have.

Question. Look at pages 286 and 287, in pamphlet purporting to contain the testimony for claimants in a suit wherein Harvey & Livesey are claimants, and United States defendants, now pending in the United States Court of Claims, Washington, D. C., which pages are a part and parcel of the deposition of one William A. Wheeler, on behalf of said claimants, and also at pages 313 and 314, in same pamphlet last mentioned, being a part of the deposition of one George C. Russell, and state what you know with reference to all or any of the items therein mentioned, as to their sale or value.

Answer. I sold to Harvey & Livesey, said claimants, a pile-driving boat, with engine and boiler and necessary apparatus for pile-driving. I have seen same boat at Rock Island, and they tell me it is called the pump boat. I also sold to them two flat-boats, am not certain whether it was two or one. Also sold to them six travelers with six jennies or crabs, and five smaller jennies or crabs: the six first mentioned were double-guard, and the five were single-guard. Also sold to them two sets of dredges, moving buckets, and chain. Also sold chains, the amount as shown by inventory now before me, 7,746 pounds. I sold them three concrete buckets; also some rope, which I am not able to say whether they took—it was not worth much. Also sold them two hydraulic jacks; also one horse-power windlass; also sold them two sand-pumps complete; also a steam-pump; there were two small pumps, wooden, on the flat-boats and pile driver, which were of little value; also twenty crowbars; I think there were a few old shovels of not much value, and a few old picks of little value; also sold them four stone hammers. I think I also sold them a lot of screws, bits, and boring machines, can't say as to number; also sold them eight drills; also some long screws, from 18 to 25, not exact as to number. I have seen these screws since at Rock Island. Also iron tackle-blocks, my impression is as many as twenty, judging from my memoranda; also wooden blocks, my impression is from fifteen to twenty sets; also six small clinch crabs, booms and all were sold with them, that is my impression; also two anchors, my impression is that there were two, not positive as to number; also some trucks, not positive; also a lot of mortar boxes, hods, and hoes, can't tell as to number; also some heavy iron hooks, can't say as to number; also some track iron, can't say how much, for travelers; also some signal-lamps, I think four; also some extra wheels, a few, can't say as to number.

Question. To what use were the foregoing boats, tools, and machinery, just mentioned in your last answer, and found in the list of articles in said book and on the pages aforesaid.

Answer. They were used in construction of the Quincy bridge.

Question. Was or was not the Quincy bridge about completed when said sale was made to said claimants?

Answer. It had been completed about four months before. It had been six months since these things had been used.

Question. Within the six months last mentioned, did you or did you not take an inventory of the aforesaid articles; and if yea, on what basis was that inventory taken?

Answer. I did; it was taken on the basis of the value at the time, but many of the things were put in at higher prices than I approved. This was owing to Mr. Clark, the engineer, who had a purpose in view in doing this. I knew that I should have the sale of them, and I knew I could not get those prices.

Question. Have you that inventory with you; if yea, please refer to it, and give the estimate as to the value of said articles according to the inventory.

Answer. I have it with me.

The pile-driver, with engine and boiler, and necessary apparatus for pile-driving was inventoried at	$2,500 00
The flat-boats, which I supposed I sold them, are inventoried at $300 apiece	600 00
The travelers complete with jennies, we inventoried at	400 00
The five smaller jennies or crabs were inventoried at $30 apiece	150 00
The two sets of dredges, buckets, and chains, we put no value on	
Chains, 7,446 pounds	645 14
The three concrete buckets	30 00
The rope was not valued at anything.	
Two hydraulic jacks, $150 apiece	300 00
Horse-power windlass	25 00
Two sand-pumps, complete	100 00
If we sold them the steam pump, it was inventoried at	613 00
[I am satisfied that we did not sell them this pump.]	
The two small wooden pumps	2 00
Twenty crowbars	12 00
Shovels and picks were not inventoried as of any value.	
Four stone hammers	20 00
Screws, bits, and boring machines were not inventoried; were considered of little value.	
Eight drills	5 00
Screws, say 22, not inventoried, but I would say that they were worth $10 apiece, which would be	220 00
Iron tackle-blocks, there were double and single: the double were inventoried at $11 apiece, and the single, at $9 apiece.	
Wooden blocks were inventoried at—some as high as $4 apiece, and some as low as two dollars apiece.	
Six small derrick-crabs, each $30	180 00

The anchors were not inventoried, but I would call them worth $2 apiece	$4 00
Trucks, 4 or 5, $3 apiece	12 00
Mortar-boxes, hods, and hoes, were not inventoried; I would say for the lot about	10 00
Heavy iron hooks; would say about for the lot	10 00
Track iron, not inventoried.	
Signal-lamps, four, at $4 apiece	16 00
Extra wheels, not inventoried; I would say for the lot	10 00

Question. Were these articles sold in bulk or in separate pieces, or in items to said claimants.

Answer. Sold in bulk.

Question. What was the amount paid you by said claimants for the entire lot, as before mentioned?

Answer. $3,750.

Question. One of the claimants' items of charge against the Government in this case, is for a loss of $25,000 on machinery and tools, occasioned by their ejectment from the work on said bridge; can you say, knowing the value of the machinery used thereon, how much loss, if any, the said claimants have sustained, by reason of not completing said bridge?

Answer. I am unable to answer this question.

Question. If the claimants had completed their contract, would their tools and machinery have been in better condition, or in worse condition?

Answer. They would have been in worse condition. If machinery is kept in good order while being used, it does not deteriorate so fast as when being not used.

Question. Have you or have you not had any experience in buying and selling boats or other craft made to float on water?

Answer. I have had experience in buying and building steamboats and flat-boats. I have bought steamboats and built flat-boats.

Question. Are you acquainted with the steamboat Oriel, mentioned on pages 286 and 314 in said pamphlet containing testimony for claimants?

Answer. I have never seen it until to-day.

Question. In your opinion, what is the cash value of said steamboat?

Answer. Fifteen hundred dollars.

Being cross-examined by James W. Harvey, for claimants, witness says:

Question. What position did you hold at the Quincy bridge?

Answer. I was assistant treasurer and general purchasing agent. I made all the purchases connected with the bridge.

Question. What did the pile-driving boat, with engine and boiler and apparatus for pile-driving, cost?

Answer. I estimate the original cost when new, to be five thousand dollars. The boat was built by me.

Question. What was the cost of each of the flat-boats mentioned here?

Answer. I built the flat-boats and estimate the cost seven hundred dollars each.

Question. What did the iron-work for the travelers complete cost?

Answer. I think four hundred dollars each.

Question. What was the cost of the jennies?

Answer. Two hundred and fifty dollars for the large ones.

Question. Can you give me an estimate of the cost of wood-work on the jennies?

Answer. I cannot; that is something I do not know anything about.

Question. Can you give the cost of the wood-work of the travelers?

Answer. I cannot; that is something I do not know anything about.

Question. Please give me the cost of each of the five small jennies enumerated here?

Answer. I think they were one hundred and twenty-five dollars each; that is my impression.

Question. There are two sets of dredges complete, with buckets, you say; what was the cost of those?

Answer. I cannot tell the cost of them.

Question. You say there was 7,446 pounds of chain; what was the average cost per pound?

Answer. The average was about ten cents per pound.

Question. What did the concrete buckets each cost?

Answer. It is my impression that they cost us about one hundred and fifty dollars each.

Question. Please tell me the amount you paid for rope during the progress of the Quincy bridge, as near as you can.

Answer. Between seven and eight thousand dollars; I think about seventy-four hundre d dollars.

Question. Please tell me the cost of each of the two hydraulic jacks?

Answer. I think they cost us three hundred and seventy-five dollars apiece; that is my impression.

Question. You speak of a horse-power; what did that cost?

Answer. I am not able to say.

Question. What was the cost of the two sand-pumps?

Answer. It is my impression that the large one cost over five hundred dollars; the other did not cost over fifty, I believe.

Question. What did the steam pump cost?

Answer. I am not able to say; I could not give you the precise figures.

Question. Please give me the average cost of crowbars?

Answer. Seven cents per pound, as near as I can recollect.

Question. How long do shovels and picks last, in your experience on such work, as building masonry in the water?

Answer. I can't answer the question.

Question. Is there not a great many of tools lost in building masonry in water?

Answer. There are.

Question. Please tell me the cost, as near as you can, of the lot of screws and boring machines?

Answer. I cannot answer that.

Question. What was those screws, cast-iron or wrought?

Anawer. Wrought-iron.

Question. How long were they?

Answer. From fourteen to sixteen feet in length; I think sixteen feet were the longest.

Question. Do you recollect the weight of each screw?

Answer. Twenty pounds to the foot; that is the estimated weight.

Question. What did they cost a pound?

Answer. Seven cents.

Question. You say there were from fifteen to twenty sets of wooden blocks. What did they cost per set on an average?

Answer. There was one set we made at an estimated cost of one hundred and fifty dollars; the others cost from five to twelve dollars per set.

Question. There were six small derrick-crabs, with booms, you say. What did they cost per set, with irons complete?

Answer. They cost about fifty dollars apiece.

Question. Did you make the iron hooks you speak of here?

Answer. I did.

Question. Can you give me the cost per pound of iron, and how many pounds of iron in one pair of hooks?

Answer. The iron, I think, cost twenty cents per pound, being Loomore iron. I cannot give the weight.

Question. Can you tell me the cost of the T-tract railroad iron used by claimants; or did you sell to H. G. Bond any of such iron?

Answer. I cannot; and I did not sell to H. G. Bond.

Question. Please tell me the worth or cost of duplicate iron wheels, boxes, bolts, and such articles as are used in the machinery of such works?

Answer. The wheels and boxes cost four cents per pound.

Question. Can you tell me the quantity kept on such works?

Answer. I cannot.

Question. Would there, in your judgment, be four tons?

Answer. No; I should say it would not be necessary to keep one ton if you were within reach of a foundery where they could be cast.

Question. You say you have bought steamboats; have you ever built one; and if so, what one?

Answer. I never built any.

Question. Do you know anything of the power of the steamboat Oriel spoken of?

Answer. I do not.

Question. Could you give me an estimated cost of such machinery as is on her?

Answer. No; I could not.

Question. You say you sold the machinery enumerated in your testimony for thirty-seven hundred and fifty dollars; was that all you could get for it at that time?

Answer. It was.

Question. Was that all it was worth or cost?

Answer. It was all it was worth. Because I could get no more for it; it was not what it cost.

Question. Whom did you sell this machinery to?

Answer. It is my impression that the bill of sale was made to H. G. Bond, as he endorsed the paper of claimants that was given in payment therefor. The said Bond told me the property was purchased for claimants to carry on their contract with the Government in building this Rock Island bridge. Mr. Harvey was present, and was consulted by Mr. Bond when the purchase was made.

Question. Do you know how much we paid H. G. Bond for the machinery bought of you at Quincy at that time?

(All the foregoing cross examination, and particularly each and every question, with the answer thereto, showing the original cost of said articles, as well as the last question, objected to by counsel on behalf of the United States, for irrelevancy, being immaterial, assuming facts not proven, and because the same is not cross-examination.)

Answer. I never considered that the property belonged to Mr. Bond, or was bought for his use. If there was a bill of sale made out to him, it was at my suggestion to secure him for endorsing the paper which was offered in payment therefor.

Question. Do you know of us buying any machinery at the foundery at Quincy?

(Objected to, because not cross examination, by counsel for United States.)

Answer. It is my impression that they did buy some few articles. I do know of their buying two full sets of blacksmith's tools of Mills & Fisk, at Quincy. I sold them to Mills & Eisk, and they bought them afterwards. I do not remember the value of those tools?

Question. Do you know of our buying a bucket-dredge in Chicago, and also a lot of ather machinery and tools?

(Objected to by counsel for United States, for same reasons as last preceding question.)

Answer. I do not.

Question. Do you know of our buying any machinery anywhere, except that bought in Quincy?

Answer. I do not.

Question. Did you have more than one pile-driving boat at the Quincy bridge?

(Objected to for the same reason as last above.)

Answer. We did; we had two large ones.

Question. What did you do with the other boat?

Answer. Sold it to Haywood, Stillwell & Co., of Hannibal, Missouri.

Question. When, and at what price?

Answer. It was in the fall of 1868, at 2,200 dollars.

Question. Was there any difference in the value of the two boats; and, if any, how much?

Answer. The cost of the two boats was the same, and they were both invoiced at the same price in our inventory, but the one sold to Harvey & Livesey was considered by the men who used the two, as the better boat.

Question. Had you an offer for that boat that Harvey & Livesey now have before you sold it; and, if so, when?

Answer. I did not.

(All the foregoing cross-questions with the answers thereto taken down, since the objection was noted, objected to on behalf of United States, because of its being immaterial, and not cross-examination. Objection entered at the instance of H. C. Connelly, Esq.)

Question. Please look at pages 286 and 287 of the catalogue of tools and machinery, given in the testimony of William A. Wheeler, and enumerate what articles, each separately, you sold to H. G. Bond or Harvey & Livesey, at Quincy, in the summer of 1869?

Answer. I have done so already, in answer to question on direct examination.

Question. Please look at said pages, and say what tools and machinery that are there enumerated you did not sell to said claimants?

Answer. Steamboat Oriel, spud-boat, six flat-boats, (since my testimony-in chief, I am satisfied I have not sold any flat-boats,) the travelers I sold, but am not positive about the frames, which were made of wood. I sold a derrick, but whether it was this one or not I do not know; bucket dredge-boat complete: blacksmith shop and tools; stone trucks; traveling frame-work on piers No. 2 and 4, and abutments at Davenport and Rock Island; frame-work for loading, unloading, and storing; some of the ropes I sold them, but not all, I presume; 3 stone-jacks, 6 small jacks, 3 stone-beds, five wagons and ox-team, 4 dozen wheel-barrows. I sold a few shovels, but not four dozen; and a few picks and handles, but not three dozen; of the six stone hammers, I sold four; I sold them 8 steel drills, but not 14; buggy and harness. Here is six anchors mentioned—I sold them two; large anchor, six floats, four stone boxes, five small bolts. I sold them four signal lamps, but not twelve. Of the sundries: I sold them part, but not a great deal.

Question. Look at said pages. Are you sure that all the other things not enumerated in the last above answer were bought of you at Quincy?

Answer. It is my impression that they were. I sold you things corresponding to those enumerated, and the things, so far as I have seen, are the ones I sold you. The pump-boat with boiler-engine

and apparatus, those long screws, those iron blocks, some of the travelers and jennies that I have to-day seen, I have sold to you.

Question. Did you sell this horse-power and windlass?

Answer. I sold you a horse-power and windlass. I don't know whether it is the one in your list or not.

Question. Did you sell us two pumps complete that is in this catalogue?

Answer. I don't know anything about your catalogue. I sold you two pumps complete, and saw them to-day.

Second general interrogatory by the Commissioner: Do you know of any other matter relative to the claim in question? If you do, state it.

I have nothing further to say.

NEWTON FLAGG.

Subscribed and sworn to before me this 16th day of April, A. D. 1872.

EDWARD D. SWEENEY,
United States Commissioner.

Newton, Flagg, being on his oath first duly sworn, says that he resides at Quincy, Ill., and came from there to Rock Island as a witness in the above-entitled cause; that he had travelled one hundred and sixty-five miles from his place of residence to the place of taking the foregoing deposition, and attended two days. And further saith not.

NEWTON FLAGG.

Subscribed and sworn to before me this 16th day of April, A. D. 5872.

EDWARD D. SWEENEY,
United States Commissioner.

Report of the War Department, filed March 1, 1871.

WAR DEPARTMENT,
WASHINGTON CITY, *February 27, 1871.*

To CLERK Court of Claims,

SIR: Referring to your request of the 24th December, 1870, for certain evidence in the case of Harvey & Livesey (No. 6284) *vs.* The United States, now pending in the Court of Claims, I am instructed by the Secretary of War to transmit the accompanying duly authenticated copies of papers furnished by the Chief of Engineers, to

whom your communication was referred, together with the report of that officer.

Very respectfully, your obedient servant,

W. M. DONN,
Assistant Judge Advocate General.

WAR DEPARTMENT,
WASHINGTON CITY, *February 27, 1871.*

I, William W. Belknap, Secretary of War, do hereby certify that John G. Parke was, at the time of signing the annexed report, a major of engineers in the Army of the United States, and that his signature is genuine.

In testimony whereof I have hereunto set my hand and caused the seal of the Department of War to be affixed.

[SEAL.] WM. W. BELKNAP,
Secretary of War.

OFFICE OF THE CHEIF OF ENGINEERS,
WASHINGTON, D. C., *February* 25, 1871.

HON. W. W. BELKNAP,
Secretary of War,

SIR: In compliance with the request of the clerk of the United States Court of Claims, of the 24th December last, for all information known to or on file in the War Department necessary to protect the interests of the Government in the case of Harvey & Livesey *vs.* The United States, (No. 6284,) I transmit herewith the papers specified in the following list, being copies from the records of this office:

No. 1. Extract of contract with Harvey & Livesey, dated June 1, 1869.

No. 2. Letter of instructions of Chief of Engineers to General G. K. Warren, dated July 10, 1869.

No. 3. Letter of Chief of Engineers to General Warren, authorizing stoppage of work, dated July 23, 1869.

No. 4. Letter of Harvey & Livesey to Secretary of War, dated July 28, 1869.

No. 5. Letter from General Warren to Chief of Engineers, dated September 22, 1869, inclosing certain correspondence.

No. 6. Letter of Chief of Engineers to General Warren, inclosing copy of letter to Secretary of War, with indorsements, dated October 18, 1869.

No. 7. Letter from General Warren, (a reply to No. 6.,) dated October 30, 1869.

No. 8. Letter of Chief of Engineers to General Warren, dated November 6, 1869.

No. 9. Letter of General Warren (inclosing certain correspondence) to Chief of Engineers, dated November 25, 1869.

No. 10. Letter of General Warren to Chief of Engineers, dated November 26, 1869.

No. 11. Letter of General Warren to Chief of Engineers, dated November 26, 1869.

No. 12. Letter of Chief of Engineers to General Warren, dated December 8, 1869.

No. 13. Letter of Chief of Engineers to Secretary of War, dated January 29, 1870.

No. 14. Letter of Chief of Engineers to General Warren, dated January 31, 1870.

No. 15. Letter of Chief of Engineers to General Warren, dated May 2, 1870.

No. 16. Letter of General Warren to Chief of Engineers, dated May 14, 1870.

No. 17. Letter of General Warren to Chief of Engineers, dated May 16, 1870.

No. 18. Letter of Chief of Engineers to General Warren, dated May 19, 1870.

No. 19. Letter of Chief of Engineers to General Warren, dated May 23, 1870.

No. 20. Letter of General Warren to Chief of Engineers, dated June 2, 1870.

No. 21. Letter of Chief of Engineers to Secretary of War, dated June 2, 1870, with inclosed letters from Harvey & Livesey, dated April 26, 1870, to Hon. H. Price, and from Price to Secretary of War, dated April 26, 1870; and letter of General Warren, dated May 23, 1870, to Chief of Engineers.

No. 22. Indorsement of Chief of Engineers to Secretary of War, dated September 28, on Letter of Colonel Macomb to Chief of Engineers, dated September 21, 1870.

No. 23. Letter of Chief of Engineers to Colonel Macomb, dated September 23, 1870.

No. 24. Letter of Chief of Engineers to Colonel Macomb, dated September 30, 1870.

No. 25. Letter of Colonel Macomb to Chief of Engineers, dated October 10, 1870.

No. 26. Letter of Chief of Engineers to Secretary of War, dated November 26, 1870.

No. 27. Letter of Harvey & Livesey to Colonel Macomb, dated October 7, 1870.

The letter of the clerk of the court and inclosed petition are herewith returned.

By direction of Brigadier General Humphreys, and in his absence—

Very respectfully, your obedient servant,

JOHN G. PARKE,
Major of Engineers.

(Indorsed:) C 678, December, 1870.

OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON, D. C., *February 25, 1871.*

The Chief of Engineers to the Hon. Secretary of War: In compliance with request of the clerk of the Court of Claims, transmits copies of papers in case of the claim of Harvey & Livesey, contractors, *vs.* The United States.

Letter of Gen. A. A. Humphreys to Gen. G. K. Warren, July 10, 1869.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., July 10, 1869.

Bvt. Maj. Gen. G. K. WARREN,
U. S. A., Major of Engineers, St. Paul, Minnesota.

GENERAL: The construction of the bridge across the Mississippi river at Rock Island having been transferred to the Engineer Department, and the charge of the work having been assigned to you, all records, reports, plans, &c., relating to the same in the possession of Bvt. Brig. Gen. T. J. Rodman, ordnance, heretofore in charge, will be turned over to you by him.

Herewith are copies of the report of the chief of ordnance to the Secretary of War, February 8, 1867, and of the several appropriation acts, which are sent for your guidance, in connection with the papers you will receive from General Rodman.

The report of the Chief of Ordnance to the Secretary of War, February 8, 1867, transmitting report of the commission, February 4, 1867, upon Rock Island arsenal and bridge, fixes the general plan of the bridge, and its cost, that report having been made the basis of legislation by Congress. The subsequent acts of Congress, and especially the joint resolution of July 20, 1868, establish that the expenditure of the United States for the construction of the bridge shall not exceed one million of dollars—the estimated cost; that is, the cost of the bridge must not, under any circumstances, exceed one million dollars, and this without any reference whatever to any amounts that may be paid the United States by railroad companies under the provisions of the acts of Congress relating to the bridge. Whatever amounts such companies may pay to the United States are to go into the general treasury.

Upon taking charge of the work and receiving its papers and records, you will carefully examine the subject and present your views upon it, determining whether a bridge conforming to the conditions laid down in the report of the Chief of Ordnance of February 8,

1867, and subsequently, and to be found in acts of Congress relating to such structures, so far as they affect the navigation of the river, possessing every requisite of stability and strength for the full, simultaneous working of the double-track railroad and wagon-road, can be built for the sum of one million of dollars; and if not, for what sum?

You will present your project for such a bridge.

It is highly important that the construction of the bridge should be commenced at once; yet, before authorizing its commencement, the Secretary of War must be satisfied that it will conform to all the conditions of proper strength and stability, non-obstruction of navigation, and cost. You will not commence the structure until authorized to do so.

Your immediate and earnest attention should be given to the subject, and full report made at the earliest time practicable.

The appropriations for the bridge amount to $700,000.

You are authorized to make such requisitions from time to time for such sums as may be necessary, to employ such assistants as you may need, at the rates heretofore authorized for your other engineer works, reporting any modifications in the rates you may consider desirable.

Should you require the aid of an officer of engineers to whom you may give the immediate supervision of the work under your direction, the detail of one will be made upon your request to that effect.

Very respectfully, your ob't serv't,

A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers.

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

(Indorsed:)
(2.) C 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS,
July 10, 1869.

Letter of instructions to Gen'l Warren.

Letter of Gen. A. A. Humphreys to Gen. G. K. Warren, of July 23, 1869.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON, D. C., *July 23, 1869.*

Bvt. Maj. Gen'l G. K. WARREN, U. S. A.,
Major of Engineers, Davenport, Iowa.

GENERAL: Your telegram of yesterday's date, relative to the bridge at Rock Island, &c., has been received, and the following was telegraped to you this day in answer, and is hereby confirmed, viz:

"You are right as to contracts for bridge. Stop everything until you are authorized to go on.

"It was expected you would proceed at once to Davenport upon receiving your telegraph order of July 10th, and take charge of the bridge.

"Proceed there immediately.

"A. A. HUMPHRES,
"*Brig. Gen'l & Chief of Engineers.*"

By command of Brig. Gen. Humphreys.

Very respectfully, your ob't serv't,

JNO. G. PARKE,
Major of Engineers, Bvt. Maj. Gen. U. S. A.

(Indorsed:)
(3.) C 678. Dec., 1870.

OFFICE CH'F OF ENG'RS,
Washington, D. C., July 23, 1869.

Ch'f of Eng'rs to Gen. Warren, confirming telegram authorizing stoppage of work until further orders, &c.

OFFICE CHIEF OF ENG'RS, *July 23d, 1869.*

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

Letter of Gen'l G. K. Warren to Gen'l A. A. Humphreys, of September 22, 1869.

U. S. ENGINEER'S OFFICE,
Davenport, Iowa, September 22d, 1869.

To Bvt. Maj. Gen'l A. A. HUMPHREYS,
Brig. Gen'l & Chief of Engineers U. S. A.

GENERAL: The contractors for building the piers and abutments, after getting all ready to go to work, wrote me a letter claiming that

under the contract the United States must make the coffer-dams and pump out the water, &c. I informed them that I considered that to be their work, whereupon they filed a written protest to my decision, and went to work.

I referred the matter to Gen'l Rodman, and he sustains my decision by saying that it is not only expressed in the contract, but was so understood at the time of signing the contract. The contractors must have so understood the matter, because they purchased the lumber and iron for the coffer-dams, and cut and prepared it. I have talked with them frequently about these coffer-dams, and never with a suspicion that it was not their work.

I should not be more surprised if they should now protest against being paid in anything but gold than I was at the claim they have recently set up about the coffer-dams. I have not considered it a reason for stopping them from working, and have informed them they could go on with the work and make their claim good if they could, but that my consent to this was not to be regarded as in any way admitting the claim. I have prepared a copy of all the papers relating to this matter, and transmit them herewith.

The contractors also claim damages for having their work suspended by my order. I think it was impossible even for Gen. Rodman to have set them at work any sooner than I did. I informed them the piers were determined on the 23d of August, but the contractors were not ready until September 13th. All the facts relating to this claim can be stated when it is made out. So far as they actually sustained a loss by this suspension of the work, I think they have a just claim.

If I understand the law correctly, the course I have taken in allowing the work to proceed is the right one, and claim stands on its own merits. In prosecuting it the U. S. are the defendants. If I stopped the work till this matter was adjusted, besides losing time, the U. S. would have to accede to their demands, or prosecute them for failing in their contract.

By comparison of the bid of the contractors with that of Raynolds & Saulpaugh it will be seen that the price is low, and is just about what this latter party's bid was without the coffer-dams, &c. Gen'l Rodman's proposal solicited bids both ways, and the contractors, Harvey & Livesey, put in an offer for but one way, which was understood at the time to include coffer-dams and everything not excepted in the contract.

Yours, respectfully,
(S'g'd)

G. K. WARREN,
Major Engineers, &c.

Extract from original instructions of Chief of Engineers to Gen'l Warren.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., July 10, 1869.

Bvt. Maj. Gen'l G. K. WARREN, U. S. A.,
Major of Engineers, St. Paul, Minn.

GENERAL: The construction of the bridge across the Mississippi river at Rock Island, having been transferred to the Engineer Department, and the charge of the work having been assigned to you, all the records, reports, plans, &c., relating to the same in the possession of Bvt. Brig. Gen. T. J. Rodman, ordnance, heretofore in charge, will be turned over to you by him.

* * * * * *

It is highly important that the construction of the bridge should be commenced at once, yet before authorizing its commencement the Secretary of War must be satisfied that it will conform to all the conditions of proper strength and stability, non-obstruction of navigation, and cost. You will not commence the structure until authorized to do so.

* * * * * *

Your obedient servant,

A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers.

Telegram from Gen. Warren to Chief of Engineers.

SAINT PAUL, MINN, *July 22, 1869.*

To Bvt. Maj. Gen. A. A. HUMPHREYS,
Chief of Engineers U. S. A., Washington, D. C.:

Gen. Rodman has contracted for masonry of bridge. Stone is coming now. Contractors ready to work, and lose two thousand five hundred dollars per month by stopping. Under my instructions I stop everything till I make report. Is that right?

G. K. WARREN,
Maj. Eng'rs & Bvt. Maj. Gen'l.

Extract from telegram of Chief of Engineers to Gen. Warren.

WASHINGTON, D. C., *July 23, 1869.*

To Maj. Gen. G. K. WARREN:

You are right as to contracts for bridge. Stop everything until you are authorized to go on. * * *

(Signed) A. A. HUMPHREYS,
Brig. Gen, and Ch'f Eng'rs.

Instructions.—Chief of Engineers to Gen. Warren.—Extract.

OFFICE OF CHIEF OF ENGINEERS,
Washington, D. C., July 31, 1869.

To Bvt. Maj. Gen'l G. K. WARREN, U. S. A.,
Maj. Eng'rs, Davenport, Iowa,

GEN'L: I am directed by the Chief of Engineers to inform you that the views and suggestions in reference to the construction of the Rock Island bridge, as contained in your letter of July 30th, have received the sanction of the Secretary of War, and you are therefore authorized to proceed with the masonry and pier work in accordance with your recommendation.

* * * * * * *

By command of Brig. Gen. Humphreys.
Very respectfully, your obedient servant,
S'g'd) JNO. G. PARKE,
Major Engineers, Bvt. Maj. Gen'l U. S. A.

Letter from Maj. Stickney, superintending construction, to Messrs. Harvey and Livesey, contractors.

U. S. ENGINEER'S OFFICE,
Davenport, Iowa, August 23, 1869.

To Messrs. HARVEY AND LIVESEY.

GENTLEMEN: The position of the abutment and 1st pier of the bridge on the Iowa side are determined and marked ready for you to commence their construction.

Very respectfully, your obedient servant.
(Signed) AMOS STICKNEY,
Capt. Eng'rs and Bvt. Major.

Letter from Gen. Warren to Gen. Rodman.

OFFICE OF THE ROCK ISLAND BRIDGE,
September 15th, 1869.

To. Gen. T. J. RODMAN,
Com'g R. I. Arsenal,

GENERAL: Enclosed please find copies of correspondence between Messrs. Harvey & Livesey, contractors, and Maj. Amos. Stickney, in reference to the building of the coffer-dams, &c.

From the express wording of the contract I am obliged to think that the building of the dam and exhausting the water from the same, and preparing the beds for the masonry, belongs entirely to the con-

tractors, for which they were to be compensated by the price fixed on the masonry.

As you were the officer who executed the contract on the part of the United States, will you please inform me if there was anything implied in any way which justifies the protest made by Messrs. Harvey & Livesey.

It seems to me clear that they having made all the preparation for putting in the coffer-dams and only entering their protest against doing so just as they were going at the work, shows that this is an afterthought of theirs, and not only according to the wording of the contract, but not according to their own understanding of it at the time it was made.

Yours respectfully,

G. K. WARREN,
Major Engineers, &c.

Letter from Gen. Rodman to Gen. Warren.

ROCK ISLAND ARSENAL, *Sept. 16, 1869.*

To Bvt. Maj. Gen. G. K. WARREN,
In Ch'ge of Const'n of Rail and Wagon Bridge,

SIR: Yours of the 15th inst., enclosing correspondence between Messrs. Harvey & Livesey and Maj. Stickney, relative to construction of coffer-dams, &c., is received.

In reply I have to state that my understanding of the contract at the time it was signed was, that Messrs. Harvey & Livesey were to put in the coffer-dams, prepare foundations, and do and furnish everything, except the stone, sand, and cement necessary to the completion of the piers and abutments; and I was then, and am now, fully impressed with the belief that they so understood it; and the sentence in the contract closing with the expression and "nothing more" was intended, and so stated at the time, to render the contract entirely explicit and free from all ambiguity.

Very respectfully, your obedient servant,
(S'g'd,) T. J. RODMAN,
Lt. Col. Ord. and Bvt. Brig. Gen'l U. S. A.

ROCK ISLAND, *May 25, 1869.*

We propose to build the masonry of piers and abutments of the Rock Island bridge, as per annexed advertisement.

Small piers and abutments, per yard $11
Draw-pier " " $13

(S'g'd,) HARVEY & LIVESEY,
Madison, Wis.

A truce copy:
(S'g'd) CLIFTON COMLY,
Capt. of Ordnance.

(Indorsed:) (5) C 678. Dec., 1870.

DAVENPORT, IOWA, *Sept. 22d, 1869.*

Warren, B. M. Gen'l, G. K., states that the contractors for building the piers and abutments of the Rock Island bridge, claim that, under the contract, the U. S. must construct the coffer-dams, &c., and also claim damages for suspension of work by his order. Remarks upon the invalidity of their claims, and submits the matter, with copies of correspondence relating thereto annexed, to Dep't.

I certify the within to be true copies from the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

OFFICE OF CH'F OF ENG'RS, *February 24, 1871.*

Letter of General John G. Parke to Gen'l Warren, of October 18, 1869.

[Copy.]

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., October 18th, 1869.

Bvt. Maj. Gen. G. K. WARREN,
Corps of Engineers, St. Paul, Minn.,

GENERAL: Your letter of the 22d ultimo, stating that the contractors for building the piers and abutments of the Rock Island bridge, claim that, under the contract, the United States must construct the coffer-dams, &c., having been referred to the Secretary of War, was by him referred to the Judge Advocate General of the Army for his opinion.

A copy of the communication from this office to the Secretary of War, with a copy of the Judge Advocate General's opinion endorsed thereon, is transmitted herewith for your information and guidance.

By command of Brigadier General Humphreys.

Very respectfully your obedient servant,

JNO. G. PARKE,
Maj. Eng'rs & Bvt. Maj. Gen. U. S. A.

OFFICE CHIEF OF ENGINEERS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(6.) C 678. Dec. 1870.

OFFICE CHIEF OF ENGINEERS,
October 18, 1869.

Chief of Engineers to General Warren, transmitting copy of letter from this office to Secretary of War, with copy of an indorsement of Judge Advocate General thereon, in relation to construction of coffer-dams, &c. (1 enclosure.)

Letter of Chief of Engineers to General Sherman, of October 6, 1869, with endorsements thereon.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., October 6, 1869.

General W. T. SHERMAN,
Secretary of War, War Department,

GENERAL: I have respectfully to submit for your information the accompanying communication from General Warren, reporting that the contractors for the construction of the piers and abutments of the Rock Island bridge have protested against his decision in reference to certain work required of them under their contract.

I have examined the contract with Messrs. Harvey & Livesey, and all the papers relating to the case, and am of the opinion that General Warren is correct in his decision as to the requirements of the contract set forth in his letter of September 14th, addressed to the contractors.

In the endorsement upon the protest of the contractors, General Warren states that, "In order not to delay the work, I consent to the work going on until the matter can be referred to the U. S. Attorney General."

This suggestion is not concurred in by me, since it is not usual to ask the opinion of the Attorney General in such cases, which belong rather to the province of the District Attorney or other legal counsellor.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
(Signed) *Brig. Gen'l & Chief of Engineers.*

I certify the above letter and endorsements to be true copies from the record of this office.

JNO. G. PARKE,
Major of Engineers.

OFFICE CHIEF ENGINEERS, *February 24, 1871.*

(Indorsed:)
(6.) C 678. Dec., 1870.

OFFICE CHIEF OF ENGINEERS,
October 6, 1869.

The Chief of Engineers submits for the information of the Secretary of War, a communication from General Warren, reporting that the contractors for constructing piers and abutments for Rock Island bridge have protested against his decision in relation to certain work required of them under their contract. Upon an examination of the contract and papers relating thereto, is of the opinion that General Warren is correct in his decision. Gen. Warren, in his endorsement on the protest, consents to the work going on until the matter can be referred to the U. S. attorney. This suggestion of Gen. Warren's

the Chief of Engineers does not concur in, as it is not usual to ask an opinion from that officer in such cases, it comming more properly within the province of the dist. attorney or other counsellor.

WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
October 14, 1869.

Respectfully returned to the Secretary of War. Upon the contract, and the statements of Gen'ls Warren and Rodman, I can come to no other opinion than that which they have arrived at in regard to the obligation of the contractors to build the coffer-dams, pump them out, &c., as an incident to the erection of ths piers and abutments. The grounds for their conclusion are so clearly and fully stated by these officers, who are far more competent to judge of this matter than this Bureau can be, that it is unnecessary for me to repeat or enlarge upon them. It is understood that the contractors are proceeding with the work in accordance with the decision of General Warren, but *under protest.* Should they, however, when the determination of the Secretary of War (provided he approve the action of Gen'l Warren) is made known to them, refuse to continue the preliminary work on the dams, &c., the Government should at once take charge of the entire work to their exclusion, charging them with the costs, &c., in conformity with the condition of the contract. Should they continue the work, any claim which they may hereafter make for damages or additional compensation, on account of being required to perform the work against which they have protested, can be met and properly defended when formally presented or prosecuted.

(Signed,) J. HOLT,
Judge Advocate General.

Respectfully returned to the Chief of Engineers, inviting attention to the foregoing opinion of the Judge Advocate General.

By order of the Secretary of War.

OSCAR A. MACK,
Bvt. Col. U. S. A.

WAR DEP'T, *Oct. 16, 1869.*

Letter of Gen'l Warren to Gen'l Humphreys, of October 30, 1869.

[Copy.]

U. S ENGINEER'S OFFICE,
Saint Paul, Minn., October 30th, 1859.

To Bvt. Maj. Gen'l HUMPHREYS,
Brig. Gen'l and Chief of Engineers.

GENERAL: I have received your com'n, dated October 18th, signed by Gen'l Parke, sent for my information and guidance, and it has

left me in doubt what to do. After thinking over it for some days, I have concluded to write you this letter of inquiry and explanation, so that my final action toward the contractors for the masonry of the Rock Island bridge shall be definite and explicit. I wish this letter to be conversational in its official character, and that nothing in it shall be considered a matter of final record without a careful reconsideration from me.

The Judge Advocate General says: "It is understood that the contractors are proceeding with the work in accordance with the decision of General Warren, but under protest." (That is so.) "Should they, however, when the determination of the Secretary of War (provided he approves the action of General Warren) is made known to them, refuse to continue the preliminary work on the dams, &c., the Government should at once take charge of the entire work to their exclusion, charging them with the cost, &c., in conformity with the condition of the contract. Should they continue work, any claim which they may hereafter make for damages, or additional compensation on account of being required to perform the work against which they have protested, can be met and properly defended when formally presented or prosecuted."

I infer from the whole document which contains your approval of my decision in regard to the contract, as well as that of the Judge Advocate General, that the Secretary of War meant to approve of it too, but this approval is not expressed. The endorsement from the War Office is as follows:

"Respectfully returned to the Chief of Engineers, invining attention to the foregoing opinion of the Judge Advocate General.

"By order of the Secretary of War:

(Signed) "OSCAR A. MACK,
"*Brev. Col. U. S. A.*"

The way the case stands between me and the contractors, is this: They are working according to my interpretation of the contract, have got in one coffer-dam, pumped out the water, prepared the bed, and are building the masonry. They are going ahead with the next pier as soon as the water allows them. They protest against my interpretation, and say they mean to go to work according to it, but will keep an account of all the expenses incurred in work they claim to not belong to their contract, and will make a charge for it against the U. S. I consent to their going to work under this protest until I have the opinion of the Attorney General (I should have said proper legal authority) in regard to it, it being understood that the consent on my part admitted nothing as to the validity of the contractors' claim.

As near as I could comprehend the case, there was nothing else for me to do, and I do not see any value in the protest unless it gives the contractors a better opportunity to enter their claim in the courts than they would otherwise have done without having made

such protest. Some persons that I consulted thought my allowing the contractors to go on after they had made this protest was wrong, and that is the point I more especially wished legal advice upon. Indirectly the Judge Advocate confirms me in the opinion that my action was correct, for, had the Secretary of War "approved my action" * * "should they continue the work, any claim which they may hereafter make for damages or additional compensation, on account of being required to perform the work against which they protested, can be met and properly defended when formally presented or prosecuted." I believe that my action left the matter exactly where the approval of the Secretary of War would leave it, and that, under the circumstances, no action on the part of the Secretary of War is called for unless he *disapprove* my action.

In that case there is no suggestion on the part of the Judge Advocate General what I must do next.

The question here occurs whether I did right in allowing the contractors to go on after protesting, instead of suspending the work until the decision of my superiors could be ascertained.

I think there was not enough substance in the claim of the contractors to justify a suspension on my part; and if I had done so, the contractors, in case they were right, would have had a claim for damages on account of this *suspension*, as well as payment according to their claim. In case the contractors were wrong, they have no claim at all. Under my decision there is no loss of time in either case. If any proper tribunal hereafter decides that the contractors' understanding of the contract is right, they ought, in justice, to be allowed their charges.

Finally, I would ask, what shall I do towards the contractors? Shall I let the matter stand as it is, or shall I inform them that the Chief of Engineers and Judge-Advocate General approve of my interpretation of the contract, or shall I inform them that the Secretary of War approves it? I expect that the contractors will go on the same as in either case, but they may not. Their claim seems to me depends solely upon the just interpretation of the contract, and cannot be affected by a decision in regard to it, unless correct in itself, no matter by whom made.

Yours, respectfully,
(Signed) G. K. WARREN,
Maj. Eng'n's, &c.

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.
JOHN G. PARKE,
Major of Engineers.

(Indorsed:)
(7.) C 678. Dec., 1870.

ST. PAUL, MINN., *Oct. 30th, 1869.*

Warren, B. M. Gen'l, G. K. In reply to Eng. letter 18th inst., enclosing for information and guidance the opinion of the J. A. Gen'l, regarding the building of the piers and abutments of the Rock Island bridge, states further difficulties in the way of settlement, for the consideration of the Dept.

Letter of Gen. Humphreys to Gen. Warren, of Nov. 6, 1869.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., Nov. 6, 1869.

Bt. Maj. Gen. G. K. WARREN,
U. S. A., Major of Engineers, St. Paul, Minn.,

GENERAL: Your letter of the 30th ultimo has been received. The Secretary of War confirms your view of the meaning of the contract for building the piers of the Rock Island bridge, and approves your action in refusing, on the part of the United States, to build the coffer-dams, pumping out the water, &c., and in requiring the contractors to perform that work as part of their contract. The Secretary of War also approves your action in permitting the contractors to go on with the construction of the piers after they had protested against your decision and action in relation to the coffer-dams, &c., but that protest will not be recognized by you in any way as a condition under which the contractors continue work; nor is it to be considered as forming any agreement or understanding between yourself and them, nor as having been assented to in any manner or degree on the part of the United States. You will notify them accordingly.

Very respectfully, your obd't serv't,

A. A. HUMPHREYS,
Brig. Gen. and Chief of Eng'rs.

OFFICE OF CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(8.) C 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS,
Nov. 6th, 1869.

Ch'f of Eng'rs approving Gen'l Warren's action in relation to building coffer-dams, &c.

Letter of Gen. Warren to Gen. Humphreys, of Nov. 25, 1869.

U. S. ENGINEER'S OFFICE,
St. Paul, Minn., Nov. 25, 1869.

To Bvt. Maj. Gen'l A. A. HUMPHREYS,
Chief of Engineers, U. S. A.

GENERAL: I enclose you a correspondence between myself and Maj. Stickney, relative to paying Harvey & Livesey for work done, not in the shape of finished masonry in the piers. It seems to me just and equitable that they should be paid for such work as forms part of what will be finished masonry, but under the wording of the contract I do not see how I can pay for it and render a satisfactory voucher to the Auditor. There must be a rule of the Government applicable to such cases, but if there is any authorizing the payment, I am not aware of it, and before doing so have thought it best to refer the matter to you.

Mr. Harvey, the contractor, being very *very* anxious to receive payment, I yesterday telegraphed you in relation to it as follows: "Maj. Stickney reports, contractor has done work, cutting and handling stone not in abutment, worth eight thousand dollars. Can I, under the contract, pay this now?" I am apprehensive that I asked you to decide a question on insufficient statement of the facts, but I did it by telegraph to save the contractor embarrassment in his finances, which the delay of correspondence must occasion. I would recommend the payment of *all* work done if I can do it. At first I had no doubt as to my course, but as that differs from Maj. Stickney's, I am perhaps wrong. The whole matter would have been plain to me if I saw how I could render a voucher for payment for work done under the contract, unless I did it for work done and measured in the abutments and piers. I believe great strictness and care is necessary on the part of the Government in dealing with this contract, doing what is just, and nothing more nor less, according to the contract.

The correspondence between Major Stickney and myself, concerning this matter, forms copies Nos. 1, 2, and 3, enclosed.

Yours, respectfully,
(Signed) G. K. WARREN,
Major Engineers, &c.

P. S.—I place this letter in the hands of Mr. Harvey, who proposes to take this evening's train to Washington. I have kept it on hand till after the closing of the mail to see if my yesterday's dispatch should be answered. *But*, on reflection, I will send it by mail.

G. K. W.

Letter of Major Stickney to Gen. Warren, of Nov. 13, 1869.

No. 1.

OFFICE SUP'T BUILDING ROCK ISLAND BRIDGE,
Rock Island, Ill's, Nov. 13th, 1869.

Maj. Gen'l G. K. WARREN,
Corps of Eng'rs, Saint Paul, Minn.,

GENERAL: Your letter of Nov. 10th, with two inclosures concerning contract, was received this morning.* I delivered the latter to Messrs. Harvey & Livesey, and asked them what would be their next step. They replied that they shoud now go before the Court of Claims or Congress. Messrs. H. & L. are very anxious to have a payment, and as the abutment will probably be finished by the time your reply reaches me, I would recommend that a payment be made immediately. They request $6,000 on the following:

700 yards masonry completed abutment, @ $11	$7,700 00
3,669 " stone received and handled, @ $1	3,669 00
Amount expended in cutting stone, exclusive of abutment.	4,600 00
Lumber and iron for coffer-dam	1,800 00
129 y'ds sand @ 65c	83 85
	$17,852 85
10 per cent. off	1,785 28
	$16,067 75
Previous payments	9,500 00
	$6,567 57

You will notice there is an item of $1,800 for lumber and iron for coffer-dam. I objected to that, but Mr. Harvey explained that he had paid out that much money for it, and it is an item that may be included in the final payments of $11 per yard for the finished masonry, that is that it is a necessary preliminary item the same as receiving and cutting stone. With that understanding, I recommend, that they be paid $6,000. Mr. Harvey claims that the work as it stands, is worth $20,900 to them, including their own services and capital. He requests to know when you will be down, and also that the payment be sent as early as possible, that they may have it to pay off their force.

Very respectfully, your ob'd't s'v't,
(Signed) AMOS STICKNEY,
Capt. Eng'rs Bvt. Major U. S. A.

A true copy:
(Signed) G. K. WARREN,
Maj. Eng'rs, &c.

* NOTE.—This was the decision of the Secretary of War in relation to contractors' protest.

Reply of Gen. Warren to Major Stickney of Nov. 16th, 1869.

No .2.

U. S. ENGINEERS' OFFICE,
St. Paul, Minn., Nov. 16th, 1869.

To Bvt. Major AMOS STICKNEY,
U. S. Engineers in charge Construction Rock I Bridge,

MAJOR: I have just rec'd your letter of Nov. 13th. According to the contract, I do not see as I can, without now asking for authority, pay Harvey & Livesey faster than the masonry is finished. I have been advancing money to them as they perform the preliminary work, but it was irregular, and in view of the complications likely to grow out of their protest and future action in relation to it, I must stop. I do not see how I can send in my vouchers except for masonry completed and sand furnished.

When the abutment is done the amount will be for

700 y'ds masonry, @ $11	$7,700 00
129 " sand, @ 65 c	83 85
	$7,783 85
Already paid	9,500 00
Advanced on work in progress	1,716 15

I think your recommendation may be considered equitable, but we had better have all differences adjusted before any further payments are made.

Yours, respectfully,
(S'g'd) G. K. WARREN,
Major of Engineers.

P. S. I did not intend visiting the work very soon, unless my presence was absolutely necessary.
(S'g'd) G. K. W.

A true copy:
(Signed) G. K. WARREN,
Major of Engineers, &c.

Letter of Major Stickney to Gen'l Warren, of Nov. 21, 1869.

No. 3.

OFFICE SUP'T BUILDING, ROCK ISLAND BRIDGE,
Rock Island, Illinois, Nov. 21st, 1869.

Maj. Gen'l G. K. WARREN,
U. S. Eng'rs, St. Paul, Minn.

GEN'L: Your letter of the 16th inst., was received yesterday. I communicated the contents to Mr. Harvey, and he resolved to visit

you at St. Paul as soon as possible, and will hand you this letter. I think you must have forgotten the wording of the contract, or else I have interpreted it differently from you.

The contract calls for payments monthly on amount of work done during the month. I interpreted the word "work" to mean any work which would appear in the completed masonry, therefore recommended payment on such work. If the contract will not allow of my interpretation, I would respectfully suggest that, in justice to Messrs. Harvey & Livesey, authority be obtained to pay them an amount equal to what their work is worth to the U. S., less the ten per cent. retained. We were unable to work on the abutment but one day last week on account of the weather, so at present the finished masonry is about 475 yards. I send this by Mr. Harvey, as it will reach you sooner than by mail. He is acquainted with the contents of this, as I held these views and supposed you did.

Very respectfully, your ob'd't serv't,

(S'g'd) AMOS STICKNEY,
Capt. Eng'rs, Bvt. Major U. S. A.

A true copy:

(S'g'd) G. K. WARREN,
Major Engineers, &c.

(Indorsed:)

(9.) C, 678. Dec., 1870.

ST. PAUL, MINN., *November* 25, 1869.

Gen. Warren encloses copies of correspondence, &c.

I certify the within to be true copies from the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

OFFICE OF CH'F OF ENG'RS, *February* 24, 1871.

Letter of Gen'l Warren to Gen'l Humphreys, of Nov. 26, 1869.

U. S. ENGINEER'S OFFICE,
Saint Paul, Minn., Nov. 26, 1869.

To Bvt. Maj. Gen. A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers, U. S. A.,

GENERAL: It appears that because of my endorsement to the protest of Harvey & Livesey that I would have the matter referred to the Attorney-General of the U. S., these contractors have addressed and printed* a letter, stating their view of the case to the Attorney-Gen-

* The printed statement of Messrs. Harvey and Livesey referred to was addressed to the Attorney-General of the U. S., was dated Madison, Wis., Oct. 18, 1869, and is probably on the files of the Attorney-General's office.

eral. Mr. Harvey gave me two copies at my request, and I enclose of them to you.

All the answer I have to make to this is contained in my communication to you, dated September 22d, and the copies of paper sent with that letter.

Yours, respectfully,
(Signed) G. K. WARREN,
Major Engineers, &c.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Eng'rs.

OFFICE OF CH'F OF ENG'RS, *February* 24, 1871.

(Indorsed:)
(10. C, 678. Dec., 1870.

ST. PAUL, MINN., *Nov.* 26, 1869.

Warren, B. M. Gen. G. K. Encloses copy of statement of Messrs. Harvey & Livesey in the matter of their contract for the Rock Island bridge. In reply thereto refers to his letter of Sept. 22d, 1869.

Letter of Gen'l Warren to Gen'l Humphreys, of Nov. 26, 1869.

U. S. ENGINEER'S OFFICE,
Saint Paul, Minn., Nov. 26, 1869.

To Bvt. Maj. Gen. A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers, U. S. A.,

GENERAL: I received this morning your telegram in answer to mine, directing me to report by letter with my recommendation, in regard to the payment of the contractors for "work done" in cutting and handling stone not yet put in the abutment or piers.

I wrote you yesterday in regard to it. I have not paid for this work, because I did not know how to make out a voucher for it under the contract. Perhaps I make an unnecessary point, and regret I did not think to raise the question sooner, as it is my individual security that I am looking to. I would recommend that it be paid if the account for such work will be received.

Yours, respectfully,
(Signed) G. K. WARREN,
Major Engineers, &c.

OFFICE CH'F OF ENG'RS,
February 24, 1871.
I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(11.) C. 678. Dec., 1870.

ST. PAUL, MINN., *November* 26, 1869.

Warren, B. M. Gen'l G. K. Ackn'ge receipt of telegram & states in reply that he wrote yesterday, regarding the payment of contractors for "work done" in cutting and handling stone. Also, that he has not yet paid for the work, not knowing how to make out a voucher for it under contract. Reccommends payment.

Letter of Gen. Parke to Gen. Warren, Dec. 8th, 1869.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., Dec'r 8, 1869.

Bvt. Maj. Gen. G. K. WARREN, U. S. A.,
Major of Engineers, St. Paul, Minnesota,

GENERAL: Your letter of the 25th ultimo, enclosing correspondence between Major Stickney and yourself in relation to paying Messrs. Harvey and Livesey, the contractors for the Rock Island bridge, for work done not in the shape of finished masonry, &c., has been received.

It is not perceived how, under the terms of the contract, payment can be made to Messrs. Harvey and Livesey for work other than finishing masonry; and therefore your request for authority to make such payment cannot be granted.

By command of Brig. Gen. Humphreys.

Very respectfully, your ob't serv't,

JNO. G. PARKE,
Major of Engineers, Bvt. Maj. Gen. U. S. A.

(Indorsed:)
(12.) C 678. Dec., 1870.

Letter of Ch'f of Eng'rs to Gen. Warren in relation to paying H. & L. for work not in the shape of finished masonry, &c.

OFFICE OF CH'F OF ENG'S, *Dec. 8, 1869.*

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the within to be a true copy form the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

Petition of James W. Harvey to Secretary of War, requesting a construction of the Contract as will secure monthly payments for the work done.

WASHINGTON, D. C., *January* 17, 1870.

To the Honorable The SECRETARY OF WAR:

The petition of the undersigned respectfully represents that James W. Harvey (this petitioner) and James Livesey, under the name and style of "Harvey and Livesey," on the 1st day of June, 1869, entered into a written contract with the United States to construct certain Government works in said contract mentioned and specified, in Rock Island, in the State of Illinois; that, by the expressed terms of said contract, "payments are to be made monthly on the amount of work done during the month, when funds are on hand;" and that a misunderstanding exists as to the proper construction of said contract.

At the time of the signing the said contracts the contractors understood that they were to receive a just and equitable proportion of payment monthly for all work actually and necessarily done to facilitate the work under the contract, having regard, in estimating the amount and value of such work, to the contract price.

The petition further represents that the contractors have prepared a large amount of stone, which is now fit and ready to be placed in the piers, but that in consequence of the delay caused by the change from the Ordnance Department to the Engineer Corps, the construction of the piers was unavoidably suspended until the winter season, and that the work on the piers cannot be resumed before the approaching spring.

Your petitioner therefore respectfully asks, in consideration of the premises, that such official announcement of the meaning of said contract may be made as will enable General G. K. Warren, the Government engineer, to certify to the amount of work now actually done or labor performed, and that it be hereafter from month to month so done, such construction shall appear to be consistent with the spirit and if intent of said contract, and the rights and equities of the parties thereto, to the end that the contractors may receive compensation for all work now performed; and hereafter monthly, as work shall be performed in the prosecution of the work under the said contract, to assist them in discharging such liabilities as may necessarily accrue, and to enable them to accomplish the work mentioned in the contract.

I have the honor to be, very respectfully, your obedient servant,

(Signed) JAMES W. HARVEY.

(Indorsed:)

(13.) C. 678. Dec., 1870.

OFFICE CH'F OF ENG'RS,
February 24, 1870.

I certify the within to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

Letter of Chief of Engineers to Chief of Ordnance with endorsements thereon, relative to said petition of Harvey.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., Jan'y 18, 1870.

Bvt. Maj. Gen. A. B. DYER, U. S. A.,
Chief of Ordnance, Washington, D. C.,

GENERAL: The accompanying petition, dated January 17, 1870, of Messrs. Harvey & Livesey, contractors for building the piers and abutments of the Rock Island bridge, has been referred by the Secretary of War to this office for report.

General Warren submitted this question to me, by letter of Nov. 28th, and was informed that, under the wording of the contract, I did not see how payments could be made for any other work than finished masonry on piers and abutments.

The contractors now state that, at the time of signing the contract, they "understood that they were to receive a just and equitable proportion of payment monthly for all work actually and necessarily done to facilitate the work under the contract," &c., &c. I would therefore respectfully suggest that this petition be referred to General Rodman, the officer who entered into the contract on the part of the U. S., and that he be requested to furnish his understanding of the payment clause of the contract at the time of signing the paper.

I transmit herewith an extract from the contract, embracing the points in question.

Very respectfully, your obedient serv't,
(S'g'd) A. A. HUMPHREYS,
Brig. Gen. and Chief of Engineers.

OFFICE CH'F OF ENG'RS,
February 24, 1870.

I certify the above letter and endorsements to be true copies from this office.

JNO. G. PARKE,
Major of Eng'rs.

(Copy of Endorsements.)

(13.) C. 678. Dec., 1870.

ENGINEER DEP'T.
Jany 18*th*, 1870.

Gen. Humphreys refers petition of James W. Harvey (of firm of Harvey & Livesey, contractors for certain work at Rock Island) for relief. Also, encloses extract from the contract relating to the question, and requests that these papers be referred to Gen. Rodman for his opinion.

ORDNANCE OFFICE, *Jan'y 28th*, 1870.

Resp'y referred to Gen'l Rodman for his opinion, as requested by the Chief of Engineers.

(S'g'd) A. B. DYER,
Bvt. Maj. Gen. and Chief Ord.

WASHINGTON, D. C., *Jan'y* 28, 1870.

Respectfully returned to the Chief of Ordnance, with the opinion of the undersigned that the contractors herein referred to are entitled to monthly payments for stone *laid in piers* and for work done in *preparation of stone* ready for laying, not less than ten per cent. of each partial payment being retained until the fulfillment of the contract.

(S'g'd) T. J. RODMAN,
Bvt. Brig. Gen. U. S. A.

ORDNANCE OFFICE, *Jan'y 28th* 1870.

Respectfully returned to the Chief of Engineer, with the information desired.

(S'g'd) A. B. DYER.
Bvt. Maj. Gen. Chief of Ord.

Letter of Chief of Engineers to Secretary of War, of January 29, 1870.

OFFICE OF THE CLIEF OF ENGINEERS,
Washington, D. C. January 29, 1870.

Hon. W. W. BELKNAP,
Secretary of War,

SIR: I have the honor to return herewith the petition of James W. Harvey, of the firm of Harvey & Livesey, contractors for the pier work of the Rock Island bridge, referred to me for report.

There being a non-agreement between Gen. Warren and the contractors as to the meaning of the words of the contract, I deemed it proper that the question should be referred to Gen. Rodman for his understanding of the contract at the time of signing the paper, and a communication was addressed to the Chief of Ordnance on the subject. By reference to Gen. Rodman's endorsement on that letter, it would seem that his understanding was that the contractors are entitled to "monthly payments for stone *laid in piers* and for work done in *preparation of stone* ready for laying." I have therefore to recommend that payment be made on this basis; and, with your approval, I will direct Gen. Warren to be governed in accordance therewith in making his settlements with the contractors.

Very respectfully, your obd't serv't,

(Signed,) A. A. HUMPHREYS,
Brigadier General and Chief of Engineers.

OFFICE CHIEF OF ENGINEERS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(13.) C 678. Dec., 1870.

OFFICE OF THE CHIEF OF ENGINEERS,
January 29, 1870.

The Chief of Engineers reports on reference of the petition of Ja's W. Harvey, of the firm of Harvey & Livesey, relative to disagreement of understanding of contract for the pier work of the Rock Island bridge, recommends that the contractors be paid in accordance with the understanding of Gen. Rodman, viz; "monthly payments for stone laid in piers and for work done in preparation of stone ready for laying." (2 enclosures.)

Approved by the Secretary of War, Jan. 29, 1870.
ED. SCHRIVER, *In. Gen'l.*

Letter of Gen'l Humphreys to Gen'l Warren, of January 31, 1870.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., January 31, 1870.

Bvt. Maj. Gen. G. K. WARREN, U. S. A.,
Major of Engineers, Saint Paul, Minnesota.

GENERAL: The Secretary of War referred to this office, on the 17th instant, a petition of Messrs. Harvey & Livesey, contractors for building the piers and abutments of Rock Island bridge, stating that, at the time of signing the contract, they "understood that they were to receive a just and equitable proportion of payment monthly for all work actually and necessarily done to facilitate the work under their contract," &c. The petition was referred by me to the Chief of Ordnance, with the suggestion that it be referred to Gen. Rodman, the officer who entered into the contract on the part of the U. S., and that he be requested to furnish his understanding of the payment clause of the contract at the time of signing the paper.

Gen. Rodman has given his opinion that the contractors "are entitled to monthly payment for stone *laid in piers* and for work done in *preparation of stone* ready for laying, not less than ten per cent. of

each partial payment being retained until the fulfillment of the contract." The Secretary of War has, upon my recommendation, authorized that payment be made upon this basis, and you will make your settlements with the contractors in accordance therewith.

Vey respectfully, your obed't serv't,

A. A. HUMPHREYS,
Brig. Gen. and Chief of Engineers.

OFFICE OF CHIEF OF ENGINEERS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(14.) C 678. Dec., 1870.

OFFICE OF CHIEF OF ENGINEERS,
January 31, 1870.

Letter of Chief of Engineers to Gen. Warren in relation to petition of H. & L., referred to Secretary of War.

Letter of Gen'l Parke to Gen'l Warren, of May 2, 1870.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., May 2, 1870.

Bvt. Maj. Gen. G. K. WARREN, U. S. A.,
Major of Engineers, Rock Island, Illinois.

GENERAL: The enclosed communication to the Secretary of War, from Hon. Hiram Price, transmitting a letter from Messrs. Harvey & Livesey, contractors for the Rock Island bridge, complaining that plans for the work are not submitted fast enough, &c., having been referred to this office, is transmitted for your information, and for remark. Please return the papers when you have done with them.

By command of Brig. Gen. Humphreys.

Very respectfully, your ob't serv't,

JNO. G. PARKE,
Major of Engineers, Bvt. Maj. Gen. U. S. A.

OFFICE CHIEF OF ENGINEERS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:
(15.) C 678. Dec., 1870.

OFFICE OF CHIEF OF ENGINEERS,
May 2*d*, 1870.

Letter of Ch'f of Eng'rs to Gen. Warren, enclosing com. to the Sec't'y of War from Hon. H. Price.

Letter of General Warren to General Humphreys, of May 14, 1870, relative to his bargain with contractors for sand.

U. S. ENGINEER'S OFFICE,
DAVENPORT, IOWA, *May* 14, 1870.

Bvt. Maj. Gen. A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers, U. S. A.,
Washington City, D. C.,

GENERAL: I respectfully request approval of my action making a bargain with Harvey & Livesey to furnish the sand necessary for the masonry of the Rock Island bridge, at sixty-five cents a cubic yard. About $100 worth of sand has already been furnished by them.

Before making this bargain, I made inquiry of all the builders in Rock Island & Davenport, and those that procure sand, as to the cost of sand, and this was the lowest price named.

The advantage of having the sand furnished by Harvey & Livesey is, that they can get it from the river with their appliances whenever it is wanted by them, and thus avoid handling the material twice, as we would have to do if furnished by any other persons.

This arrangement between us can be terminated by either party at any time.

Yours, respectfully,
(Signed) G. K. WARREN,
Major Engineers, &c., &c.

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(16.) C 678. Dec., 1870.

DAVENPORT, IOWA, *May* 14, 1870.

Warren, B. M. Gen. G. K. Requests approval of his course in making a bargain with Messrs. Harvey & Livesey to furnish the sand necessary for the masonry of the Rock Island bridge.

Letter of Gen'l Warren to Gen'l Humphreys, May 16, 1870, about changing length of spans of bridge.

(Copy.)

U. S. ENGINEER'S OFFICE,
DAVENPORT, IOWA, *May* 16*th*, 1870.

Bvt. Maj. Gen'l A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers, U. S. A.,

GENERAL: On observing the passing of some large rafts since being here, I have come to the conclusion that it is best to make our span next the Davenport abutment, 260 from centres, instead of 230 feet, as I had at first planned, and to shorten the three next spans from 240 feet to 220 feet each. This will better answer the running of rafts past the bridge.

The cost of the superstructure by this change will only be increased about $2,000. The substructure will not be affected in its cost. We have ample means within the limits prescribed by law to do this.

Yours, respectfully,
(Signed) G. K. WARREN,
Major Engineers, &c.

OFF. CH'F OF ENGINEERS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(17.) C 678. Dec. 1870.

DANENPORT, IOWA, *May* 16*th*, 1870.

Warren, B. M. Gen'l G. K. States that he has deemed it advisable to make a change in the construction of the spans of the Rock Island bridge, to accommodate the passage of rafts, at an increased cost of about $2,000.

Letter of General Parke to General Warren, of May 19, 1870.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON, D. C., *May* 19*th*, 1870.

Bt. Maj. Gen. G. K. WARREN,
Major of Engineers, Davenport, Iowa.,

GENERAL: Your letter of the 14th instant, requesting approval of your action in making a bargain with Harvey & Livesey to furnish

the sand necessary for the masonry of the Rock Island bridge, at sixty-five cents per cubic yard, has been received. Your action is approved.

By command of Brig. Gen. Humphreys.

Very respectfully, your obed't serv't,

JNO. G. PARKE,
Major of Engineers, Bt. Maj. Gen'l U. S. A.

OFFICE CH'F OF ENG'RS,
February 24, 1870.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

(Indorsed:)
(18.) C 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS,
May 19, 1870.

Letter of Ch'f of Eng'rs to Gen. Warren, approving his agreement with H. & L. to furnish sand.

Reply of Chief of Engineers to General Warren, approving of change of spans of bridge, May 23, 1870.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., May 23, 1870.

Bt. Maj. Gen. G. K. WARREN,
Major of Engineers, Davenport, Iowa,

GENERAL: Your letter of May 16th, 1870, proposing certain changes in the plan of the Rock Island bridge, whereby the span next the Davenport abutment will be increased to 260 feet from center to center, has been received. In reply I am directed, by the Chief of Engineers, to say that the result to be attained by these changes is highly advantageous, and that the plan proposed by you for effecting this increase of span is the most judicious, and does not conflict with any requirements of law or decisions of the Secretary of War.

By command of Brig. Gen. Humphreys.

Very respectfully, your obed't serv't,

JNO. G. PARKE,
Maj. of Engineers, Bvt. Maj. Gen'l U. S. A.

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(19.) C 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS,
May 23*d*, 1870.

Letter of Ch'f of Eng'rs to Gen'l Warren, in relation to certain changes proposed by him in Rock Island bridge.

Letter of Gen'l Warren to Gen'l Humphreys, June 2, 1870. relative to excavating rock, &c., as not included in contract.

(Copy.)

DAVENPORT, IOWA, *June* 2*d*, 1870.

To Bvt. Maj. Gen. A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers, U. S. A.,

GENERAL: I enclose a voucher for work done by Harvey & Livesey, in excavating rock for the foundation of the Rock Island abutment of the bridge, which rock it was necessary to remove in order to place the bottom course of mas'rey below the level of the river bottom, when it shall be excavated to give a depth at low water of four feet alongside of the pier.

After full consideration, I have concluded that this piece of work is not included in the contract for the masonry. It is specially incident to the location.

Gen. Rodman informed me that in his plan of the bridge he intended to have this piece of work done outside of the contract. I promised the contractors to pay them for this work, and recommended that I be authorized to do so; and enclose the amount for your consideration and approval, or otherwise.

This excavation has been made by means of the coffer-dam the contractors required to lay the masonry, and the water at the present stage would stand 12 feet deep on the place of let in. The excavation itself is difficult to make on account of the confined span, the hardness of the grades which retard drilling, and the irregular and uncertain fracture of the rocks under the blast.

The charge for the work is reasonable, and could not have been done independent of the coffer-dam which the contractors had constructed for probably double the amount.

The case is one similar to that of these contractors furnishing sand which you have approved. It is work which they could do much cheaper than anyone else.

Please address me at No. 218 East 17th street, New York.

Yours respectfully,
(Signed,) G. K. WARREN,
Major Engineers, &c.

OFFICE CHIEF OF ENGINEERS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(20.) C 678. Dec., 1870.

DAVENPORT, IOWA, *June 2d, 1870.*

Warren, B. M. Gen. G. K. Encloses voucher in favor of Messrs. Harvey & Livesey for "extra work done" in excavating rock for the Rock Island bridge.

Remarks upon the justice of the claim, and recommends its payment.

Letter of Hon. H. Price to Secretary of War, April 26, 1870.

DAVENPORT AND ST. PAUL RAILROAD COMPANY,
Davenport, Iowa, April 26th, 1870.

Hon. W. W. BELKNAP, *Sec'y of War,*

DEAR GEN'L: I have just received the enclosed letter from the contractors for the stone-work on the Government bridge at this place.

They have a large quantity of stone on the ground, and complain that they cannot be furnished with the plans so as to proceed with the work. During the high water they wished to go forward with the work on the abutments or piers on shore, but say they cannot do so, and are consequently idle for the reason above given. The contractors also wish me to request you to place some practical mechanic here in addition to the officers already in charge, whose business it shall be personally to *supervise the work every day*, so that they may know that the work they are doing will not be found fault with when too late to change, unless at great expense to them.

I trust you will pardon my seeming interference in this matter, and excuse me on account of my great anxiety to see this work go forward, and the thought that, possibly, in the multiplicity of more important business that must necessarily occupy your time, you might overlook this.

I am very truly yours, &c.,

H. PRICE.

OFFICE CH'F OF ENG'RS, *February 24, 1871.*
I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Eng'rs.

(Indorsed:) (21.) C, 678. Dec., 1870.

Letter of Harvey & Livesey to Hon. H. Price, April 26, 1870.

ROCK ISLAND, *April 26, 1870.*

Hon. HIRAM PRICE,

DEAR SIR: Presuming you could no doubt give us some information in regard to what course to pursue to facilitate the progress of our work, we submit to you the following items: The land piers, which we could work upon at this stage of water to our advantage, as yet, although located by the R. R. engineers, we have no plans or instructions furnished by the Government to enable us to construct the same. The draw-pier, which includes nearly one-half of the work on which we are fully prepared to commence immediately after the water shall recede, having the stone cut that we can use to a better advantage in this pier than any other, and it is quite essential they should be removed in order to avoid unnecessary expense and inconvenience of moving our trussell and machinery in order to receive the balance of the stone; also making uncalled-for delay in the completion of the bridge. We commenced work this spring feeling confident the plans of this draw-pier, and what instructions required of Government in the fulfillment of our contract would be furnished readily, and made all preparations to hasten the completion of our work. This delay, on their part, of not furnishing the plans and location of this pier is quite detrimental to our accomplishing our object, and leads us to think our effors avail us nothing. If we had these plans and the necessary instructions, we could go on with work now that at a later day will be a great disadvantage to us. If you can, from the above items, judge of the difficulties we have to contend with, and devise some means of avoiding them, you will oblige

Yours, most respectfully,
(S'g'd) HARVEY & LIVESEY.
P'r L. N. B.

OFFICE OF CH'F OF ENG'RS, *February 24, 1871.*
I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Eng'rs.

(Indorsed:) (21.) C, 678. Dec., 1870.

Letter of Gen'l Humphreys to Secretary of War, June 2, 1870.

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., June 2d, 1870.

Hon. W. W. BELKNAP,
Secretary of War, War Dep't,

SIR: I transmit herewith, and beg leave respectfully to invite your attention to, a copy of a letter to this office, from Bt. Major-General G. K. Warren, of the 23d ult., in reply to the complaints made by the contractors for the Rock Island bridge, through Hon. Hiram Price, that plans for the work are not submitted fast enough.

The letter of Mr. Price and enclosure are herewith returned.

Very respectfully, your ob't serv't,

A. A. HUMPHREYS,
Brig. Gen'l & Chief of Eng'rs.

(Indorsed:)
(21.) C 678. Dec., 1870.

OFFICE CH'F OF ENG'RS, *June 2, 1870.*

The Chief of Engineers invites attention to enclosed letter from Gen. Warren in reply to complaint of the contractors for the Rock Island bridge that plans are not submitted fast enough.

OFFICE OF CH'F OF ENG'RS, *February 24, 1871.*

I certify the within to be a true copy from the records of this office.

JNO. G. PARKE,
Maj. of Eng'rs.

(3 enclosures.)

Letter of Gen'l Humphreys to Gen'l Warren of May 23, 1870, in reply to complaints made by contractors through Hon. H. Price.

U. S. ENGINEER'S OFFICE,
Davenport, Iowa, May 23d, 1870.

To Bvt. Maj. Gen'l A. A. HUMPHREYS,
Brig. Gen. & Chief of Engineers, U. S. A.,

GENERAL: I have the honor to acknowledge the receipt of your communication of May 2d, transmitting, for my "information and remark," a communication from Harvey & Livesey, contractors for the masonry of the Rock Island bridge, addressed to the Hon. Hiram Price, ex member of Congress, making complaint against the "Government" in regard to delaying them in their work; also the letter of Mr. Price, forwarding the letter of the contractors to the Secretary of War, and stating, in addition to the above complaints, what kind of a man they (the contractors) "wish to have supervise the work."

I am sorry that you and the Secretary of War should be bothered with complaints about work under my charge, and I hardly think the case justifies the complainants in doing it.

The first complaint is: "The land piers, which we could work up-

on at this stage of water to our advantage, as yet, although located by the R. R. engineers, we have no plans or instructions furnished by the Government to enable us to construct the same."

The "piers" meant in this complaint are, I presume, the abutments to the railroad bank, which are to support one end of the railroad bridge over the passage-way on the island side, between the main bridge and the railroad bank, and on the Davenport side across the street between the main bridge and the railroad bank. As you will see by my communication of May 16th, in relation to the respective parts of the new viaduct to be built by the U. S. and by the railroad company, it is my opinion that I am not as yet authorized or justified in building these abutments at the expense of the U. S. If the R. R. engineers have located them, I am not aware of it; but if they have, it would indicate that the building of them was their affair, and not that of the Government. There is no necessity for hurry to build these abutments, as the ground they are to stand upon is always above water.

The second complaint, about not having the location of the "draw pier" given them, the Engineer Department is already well acquainted with the cause of.

I have not, in any way, changed the plan and location of the draw from what I adopted last August; but on last March 24th, a communication was received at this office from your head-q'rs, dated March 18th, stating certain objections that had then been made to this location on account of the arsenal. As this proposed change seriously involved the navigation interests, as well as those of the arsenal, time was necessarily required to get the views of navigators on the subject. On these the Sec't'y of War decided, on April 23d, in favor of my plan.

How far Messrs. Harvey & Livesey are justified in speaking of this as an "uncalled-for delay" you are fully capable of judging.

As soon as practicable, about May the 6th, the contractors were informed that the locati n of the pivot pier was not changed. They have done nothing on this pier yet.

The general looseness of the language of the complaints made by the contractors is liable to mislead you as to their meaning. In one place they say, with regard to this draw-pier: "We are fully prepared to commence immediately after the water shall recede." This is an admission that the Government was not the cause of their delay. On the next page they say; "If we had these plans and the necessary instructions, we could go on with our work *now*, that at a later day will be a great disadvantage to us." At the first reading I thought they meant to say they could go on with the draw-pier *now* if they had the "necessary snstructions;" but their meaning can only be, if they had the plans which they allege the R. R. engineers have adopted for the abutments to the R. R. bank.

Again, the contractors say, having the stone cut, that "we can use better on this pier (the draw pier) than any other." There is no stone cut specially for the draw pier, and the only stone that could

be used to a better advantage in it than elsewhere is some *refuse* stone rejected for range work, which they can use in filling in the inside of the pivot pier. It is believed that this is the stone they refer to.

Finally, as to the wish of the contractors, stated by Mr. Price to have some practical mechanic here, in addition to the officers already in charge, &c., I would say that we have what we consider a good practical mechanic, who does personally supervise the work every day and all day. There is an implication that the contractors' work will be found fault with "when too late to change, unless at great expense to them."

I think such fears are groundless. If the fear is founded on any case that has occurred, it should be specifically stated.

I am very glad these communications have been made to the Sec't'y of War. We find these contractors very troublesome people to deal with, making extra charges and protests against our action on every imaginable occasion, probably with a view to claiming damages.

They may continue this course; and I have gone, perhaps, at more length than I otherwise should in remarking upon the complaints made in order that the Department might be made acquainted with the character of the complainants.

The communications themselves are herewith returned.

Yours, respectfully,

(Signed) G. K. WARREN,
Major Engineers, &c.

OFFICE OF CH'F OF ENG'RS,
February 21, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engr's.

(Indorsed:)
(21.) C 678. Dec., 1870.

DAVENPORT, IOWA, *May* 23*d*, 1870.

Warren, B. M. Gen'l G. K. Reports on reference of communication of Messrs. Harvey & Livesey, contractors Rock Island bridge, complaining of delay on the part of the Government in the construction of the bridge at that place.

Letter of Col. Macomb to Gen'l Parke, of Sept. 21, 1870, relative to taking the work out of contractors' hands.

(Personal.)

ROCK ISLAND, ILL'S, 21*st September*, 1870.

To Gen'l J. G. PARKE,
In charge 3d Div. Office of Ch'f of Engrs,
Washington, D. C.,

MY DEAR GENERAL: In looking at the contract of Messrs. Harvey & Livesey, it seems to provide for the exigency set forth in the official letter which I have just written.

The clause which touches the case is on the *second* page, beginning at line *eight.*

As this is a case of proceeding to extremities with men having a large interest at stake, I am not willing to take the responsibility of it without being sure, in the first place, of having the approval of head-quarters.

It is just one of the numerous objections that I have always felt to doing an important piece of work by contract; but I have never had the unpleasant experience that this seems to promise. If it is deemed best to make this matter discretionary with me, and to authorize me to take the work out of the contractors' hands if I find it absolutely necessary, please send me a telegram to that effect as soon as the matter is decided, and believe me very truly yours, &c.,

(Signed) J. N. MACOMB.

OFFICE CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Eng'rs.

(Indorsed:) (22.) C 678, Dec., 1870.

Request of Col. Macomb, Chief of Engineers, for leave to take the work into his own hands, with endorsements thereon.

(Copy.)

OFFICE OF SUPERINTENDENT OF CONSTRUCTION
ROCK ISLAND BRIDGE,
Rock Island, Ill., Sept. 21, 1870.

To Gen'l A. A. HUMPHREYS,
Chief of Engineers, U. S. A., Washington, D. C.,

GENERAL: It has become evident that the contractors for masonry on the Rock Island bridge are unwilling or unable to push forward

the work so as to get the piers ready for the superstructure during the present season. Their fault, in the first place, was in putting in coffer-dams of too little strength to stand a moderate rise in the river, and then having met with the accident of losing one coffer-dam and portions of two others from this cause, they show no disposition to repair the damage with the requisite promptness. They seem unwilling to increase their force and to expand the work so as to finish the piers before the season of frost will probably interrupt the proper carrying on of masonry. I therefore ask to be authorized to take the work into my own hands, if, in your opinion, the contract justifies this step, and there should be no improvement on the part of the contractors. I see no other prospect of getting the work done in the remainder of the present season; and there is too much risk to the portions now finished if they are to be left exposed to next winter's ice without having the advantage of the weight of the superstructure to hold them in place.

I remain, very respectfully, your most ob't servant,

(Signed) J. N. MACOMB,
Col. Eng'rs U. S. Army.

I certify the above letter and endorsements to be true copies from the records of this office.

JNO. G. PARKE,
Major of Engineers.

OFFICE CH'F OF ENGINEERS, *February* 24, 1870.

(Endorsements:)

(22.) C. 678. Dec., 1870.

ROCK ISLEND, ILL., *Sept.* 21*st*, 1870.

Macomb, Col. J. N. States that he is of the opinion that the contractors for the masonry of the Rock Island bridge will be unable to complete their work so as to get the piers ready for the superstructure this season, and requests authority to take the work into his own hands. (1 enclosure.)

OFFICE OF CHIEF OF ENGINEERS,
Washington, D. C., Sept. 28, 1870.

Respectfully submitted to the Hon. Secretary of War with the recommendation that the authority asked for be conceded, though the clause of the contract beginning with line eight of page two is not of that specific and exact character as to leave its meaning without question, yet the spirit of the clause would seem to convey the authority.

(S'g'd) A. A. HUMPHREYS,
Brig. Gen. and Chief of Engineers.

Approved by the Sec'y of War, Sept. 28, 1870.

ED. SCHRIVER,
In. Genl.

Letter of Chief of Engineers to Col. Macomb, Sept. 23, 1870, relative to complaints of tardiness of contractors.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., Sept. 23, 1870.

Col. J. N. MACOMB,
Corps of Engineers, Rock Island City, Ill.,

SIR: The Chief of Engineers directs me to inform you that complaints have been made of the tardy progress of the contractors for building the piers of the Rock Island bridge. You are respectfully requested to take suitable and efficient measures to expedite the work.

By command of Brig. Gen. Humphreys.

Very respectfully, your obedient serv't,

JNO. G. PARKE,
Major of Engineers.

OFFICE OF CHIEF OF ENGINEERS, *February* 28, 1870.

I certify the above to be a true copy from the records of this office.

JNO. G. PARKE,
Major of Engineers.

(Indorsed:)

(23.) C 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS, *Sept.* 23, 1870.

Letter from Ch'f of Engineers to Col. Macomb, in relation to complaints of tardiness on part of contractors, &c.

Order to Col. Macomb to take the work into his own hands. Sept 30, 1870.

(Copy.)

OFFICE OF THE CH'F OF ENG'RS,
Washington, D. C., Sept. 30*th*, 1870.

Col. J. N. MACOMB,
Corps of Engineers, Rock Island, Ill.,

COLONEL: Your letter of the 21st inst., stating that the contractors for masonry on the Rock Island bridge are unwilling or unable to push forward their work, &c., and asking authority to take the work into your own hands, was duly received and submitted to the Secretary of War, with the endorsement of which a copy is below. It has this day been returned with his approval. You will please govern yourself accordingly.

"OFFICE OF THE CHIEF OF ENGINEERS,
" *Washington, D. C., Sept.* 28, 1870.

"Respectfully submitted to the Hon. Secretary of War, with the reccommendation that the authority asked for be conceded, though

the clause of the contract, beginning with line eight of page two is not of that specific and exact character as to leave its meaning without question, yet the spirit of the clause would seem to convey the authority.

"A. A. HUMPHREYS,
"*Brig. Gen'l and Chief of Engineers.*"

"Approved by the Secretary of War, Sept. 28, '70.
"ED. SCHRIVER,
"*Ins. Gen'l.*"

By command of Brig. Gen. Humphreys.
Very respectfully, your obed't serv't,
JNO. G. PARKE,
Maj. of Engineers.

OFF. CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(24.) C. 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS,
Sept. 30, 1870.

Letter of Ch' f of Eng'rs to Col. Macomb, advising him of the approval of the Sec. of War of his reccommendation to take work in his own hands.

Reply of Col. Macomb October 10, 1870, that he had taken charge of the Work.

OFFICE OF SUPERINTENDENT OF CONSTRUCTION
ROCK ISLAND BRIDGE,
Rock Island, Ills., 10th *October, 1870.*

To Gen'l A. A. HUMPHREYS,
Chief of Engineers U. S. Army, Washington, D. C.,

GENERAL: I have to report that, for the purpose of hastening the completion of the piers for the Rock Island bridge, I took the work into my own hands, on the 8th instant, at seven o'clock, in the morning.

Every effort will be made to have the piers in readiness for the superstructure before the close of the present working season.

I remain very respectfully, your mo. ob't serv't,
(Signed) J. N. MACOMB,
Col. Eng'rs, U. S. A. in charge of Rock Island Bridge.

OFFICE OF CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(25.) C 687. Dec., 1870.

ROCK ISLAND, ILLS.,
October 10*th*, 1870.

Macomb, Col. N. Reports that he took the work of building the pier for the superstructure of the Rock Island bridge into his own hands on the 8th inst.

Letter of Gen. Humphreys to Secretary of War, Nov. 26, 1870.

(Copy.)

OFFICE OF THE CHIEF OF ENGINEERS,
Washington, D. C., November 26, 1870.

Hon. W. W. BELKNAP,
Secretary of War,

SIR: I have carefully examined the petition of Messrs. James W. Harvey and James Livesey, contractors to build the piers and abutments of the Rock Island rail and wagon bridge, and find their statements erroneous and their claim unfounded, and therefore recommend that it be refused. The petition is enclosed herewith.

Very respectfully, your obed't serv't,
A. A. HUMPHREYS,
Brig. Gen'l and Chief of Engineers.

OFF. CH'F OF ENG'RS,
February 24, 1871.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(26.) C 678. Dec., 1870.

OFFICE OF CH'F OF ENG'RS,
Nov. 26, 1870.

Letter from Ch'f of Eng'rs to Sec't'y of War, in relation to petition of Harvey & Livesey.

Refusal of Harvey & Livesey to voluntarily surrender the work into the hands of Col. Macomb.

(Copy.)

J. N. MACOMB,
Col. of Engineers U. S. Army, in charge of Rock Island bridge.

DEAR SIR: In answer to your communication of Oct. 6th, 1870, we have to reply that we are advised by counsel that by surrendering

the work of constructing the masonry of the Rock Island bridge under said request, a question might arise on account of the peculiar wording of said writing, wherein you say: "In view of the requirement, I have to inform you that I will *take the work as it stands, and carry it on under the provision of the contract which contemplates such change*," as to whether or not we do not voluntarily surrender the same, and we therefore have to decline the surrender. If the Government takes possession, it must be, as it is, against our assent and with our protest. For, aside from completing said work within the time specified in said contract, to wit, Dec. 1st, 1869, which was prevented by the United States Government, in that it refused to let us commence said work until near after that date, we have complied with all the terms and requirements of said contract, and we do not now understand that the Government undertakes to assume the completion of said work by reason of our failing to place the masonry where directed, or because that the work is not done in the manner provided in said contract, which are the only causes remaining that would authorize the Government to assume the completion thereof, but only because of *some complaints of tardy progress of the work.* We therefore deny the right of the Government to assume said work, and shall relinquish it only when notified by the Government that it has taken possession thereof.

(Signed) HARVEY & LIVESEY.

OCT. 7, 1870.

(A true copy:)
(Signed) AMOS STICKNEY,
Capt. of Eng'rs U. S. A.

OFFICE CH'F OF ENG'RS,
February 24th, 1871.

I certify the above to be a true copy from the records of this office.
JNO. G. PARKE,
Major of Engineers.

(Indorsed:)
(27.) C 678. Dec., 1870. October7, 1870. Letter of Harvey & Livesey to Gen'l Macomb.

(Indorsed:)
6824. Harvey & Livesey vs. the U. S. Reply of War Dept. Filed March 1, 1871.

[NOTE BY THE CLERK.—Copies of the following papers, forming part of this report of the War Department, to wit: Extract from contract of June 1, 1869; letter of contractors to Gen. Warren, and the reply thereto, of Sept. 14, 1869; protest of contractors, of Sept. 15, 1869,

and endorsement of Gen. Warren thereon; abstract of contract, of June 1, 1869; proposals for bridge masonry, bid of Reynolds, Saulpaugh & Co.; copy of an act of Congress of June 27, 1866, making further provision for the establishment of an armory, &c., on Rock Island, Ill.; also, the report of the Treasury Department, of Aug. 8, 1871, with the original contract and bond, are omitted from this record, as per stipulation of counsel for claimants and defendant, filed in the clerk's office June 8, 1878.

JOHN RANDOLPH,
Asst. Clerk Ct. of C.]

Report of War Dept.—Communications received in 1871, in the Engineer Dept., River and Harbor Division.

[Engineer Dept. R. and H. 1871.]

O.

WEST POINT, NEW YORK,
Oct. 13th, 1869.

Major AMOS STICKNEY,
U. S. Eng'rs, Rock Island, Ill's,

MAJOR: Your letter of the 23d ultimo, making certain enquiries with regard to the contract entered into by the United States with Harvey & Livesey, for the construction of the piers and abutments of the Rock Island bridge, is received.

In reply, I have to say that, by direction of General Rodman, I drew up the rough draft of the advertisement for proposals for the work referred to, and when the contract was awarded to Harvey & Livesey, I drew up the rough draft of the contract which was made with them. General Rodman directed me, in making the advertisement, to call for bids for doing the entire work, the United States furnishing the stone and cement required, on cars on the Government switch, at the lower end of Rock Island; also the sand required for the cement, and nothing more. I intended that the advertisement should be plain on this point, and in drawing up the contract with Harvey & Livesey, I was very particular to include in their work everything required for the completion of the piers and abutments, except the furnishing of stone, cement, and sand, and such templets as might be required; and I have no doubt that both Harvey & Livesey fully understood the contract as it wasintended.

Very respectfully, your obedient servant,
(Signed,)
THEO. EDSON,
Major of Ordnance U. S. A.

(A true copy.)

AMOS STICKNEY,
Capt. of Eng'rs U. S. A.

(Indorsed:) 4,643. War Dep't. 2. 1871. 1,167. Engineer Dep't. G. R. 2. 1871. 5. 2,037. A. G. O. 1871.

[308. Engineer Dep't. R. & H. 1871.]

Q.

U. S. ENGINEER'S OFFICE,
Saint Paul, Minn., Nov. 10, 1869.

To Messrs. HARVEY & LIVESEY,
Contractors.

GENTLEMEN: I made to the War Department a full statement of all the facts in relation to the agreement made with you by Gen'l Rodman, on the part of the U. S., and my action in regard to it and your protest against my decision as to who was required, under that contract, to build the coffer-dams, &c.

I have received a reply, of which I enclose you a copy, which gives you the notification required by the Secretary of War, that my views and action are approved by him.

Yours respectfully,
(Signed,) G. K. WARREN,
Maj. of Eng'rs and Bvt. Maj. Gen.

(A true copy.)

AMOS STICKNEY,
Capt. of Eng'rs U. S. A.

(Indorsed:) 4643. War Dep't. 3. 1871. 1167. Engineer Dep't. G. R. 3. 1871. 4. 2037. A. G. O. 1871.

[NOTE BY THE CLERK.—The communications of this report of War Department marked C, I, K, M, Z^4, Z^5, and Z^7, are omitted from this record by stipulation of counsel for claimants and defendant, filed June 8, 1878, being duplicates of papers found elsewhere in this record.

JOHN RANDOLPH,
Asst. Clk. Ct. of Claims.]

Report of Treasury Department.—Evidence for Defendants.

TREASURY DEPARTMENT.

Be it remembered that Allan Rutherford, Esq., who certified the annexed papers, is now, and was at the time of doing so, Third Auditor of the Treasury, and that full faith and credit are due to his official attestations.

In testimony whereof I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department, at the city of

Washington, this 23d day of December, in the year of our Lord, 1872.

[SEAL.]

GEO. S. BOUTWELL,
Secretary of the Treasury.

Copies of sundry vouchers, receipts, and endorsements.

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
December 23, 1872.

I hereby certify that the following are exact copies of original vouchers on file in this office, to wit:

In account of J. N. Macomb, colonel corps engineers:

On acct.	"Rock Island Bridge,"	Vo. 16,	2d q'r,	1870,	Harvey and Livesey.	$7,527 86
"	" " "	17,	3d "	"	do.	15,367 25
"	" " "	19,	" "	"	do.	5,790 97
"	" " "	30,	" "	"	do.	5,475 73
"	" " "	13,	" "	"	do.	1,169 25
"	" " "	1,	4th "	"	do.	44 55
"	" " "	2,	" "	"	do.	1,897 97
"	" " "	4,	" "	"	do.	205 00

Also in account of Major G. K. Warren, corps engineers:

On acct.	"Rock Island Bridge,"	Vo. 10,	2d q'r,	1870,	Harvey and Livesey.	$3,585 50
"	" " "	87,	4th "	"	do.	9,010 75
"	" " "	88,	" "	"	do.	5,405 40

ALLAN RUTHERFORD.
Auditor.

(Appropriation for Rock Island bridge.)

The United States, for (1) *same, to Harvey & Livesey, Dr.*

Date.	Designation.			Application.	Cost.
1870.					*Dols. Cts.*
May 31.	For dressing 566 22-50 cu. y'ds stone, @ $4.60.....			Preparatory to using pier of bridge..	2,605 71
" "	" laying 162 " " " @ $11..$1,782 00				
"	Deduct from the above item the am't previously paid for handling 162 cu. y'ds, @ $1.35.....	$218 70			
	And for dressing 50 cu. y'ds @ $4.60.....	230 00			
		448 70			
	Ten per cent. retained.....	44 87			
			$403 83		
					1,378 17
					3,983 88
	Less ten per cent.....			....	398 38
					3,585 50
	Contract dated June 1st, 1869.				
	Contract sent to 2nd Comptroller July 3d, 1869, by Ordnance Dep't.				
	For authority to make this payment, see copy of letter attached to vol. 87, accounts for 4th q'r, 1869.				

Received, at Davenport, Iowa, this 31st day of May, 1870, from B'v't Maj. Gen'l G. K. Warren, Maj. Corps of Engineers, the sum of thirty-five hundred and eighty-five dollars and fifty cents, in full payment of the above account. Paid by check No. 219, dated May 31st, 1870, on U. S. depositary, at Chicago, Ill's, for $3,585.50.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.— The "appropriation to which the expenditure is chargable, and the particular *fort* or *object* for which it is made, should be stated at the head of the vouchers; and the purpose for which the articles purchased were used, or intended to be used, must in all *cases*, be stated under the head for 'Application."

I certify that the within account is correct and just, the articles to be (or have been) accounted for in my return for the quarter of 1870.

G. K. WARREN,
Major Engineers, &c.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 10, of the accounts of G. K. Warren, Major Corps of Engineers, &c., for the 2d (May 31) quarter of 1870, $3,585.50.

(Appropriation for Rock Island Bridge.)

The United States, for (1) *same, to Harvey & Livesey, Dr.*

Date.	Designation.	Application.	Cost.
1869.			*Dollars. C'ts.*
Oct. 4.	For receiving and handling 3,823 cu. y'ds of stone, @ $1.35, (not in pier.)	For bridge piers	5,161 05
" "	" dressing 1,054 27-50 cu. y'ds stone, @ $4.60 per cu. y'd, (not in pier)	Preparatory to laying	4,850 89
			10,011 94
	Less 10 per cent.....	.....	1,001 19
			$9,010 75
	Contract made and entered into June 1, 1869, and sent to 2nd Comptroller July 3d, 1859, by Ordnance Dep't. For authority to make this payment see copy of letter attached.		

Received at Rock Island Illinois, this 4th day of October, 1869, from B'v't Maj. Gen. G. K. Warren, Major Corps of Engineers, the sum of nine thousand and ten dollars and seventy-five cents, in full payment of the above account. Paid by p'ts checks; Nos. { 25, dated Sept. 6th, 1869, on U. S. depositary, at Chicago, Ill's, for $2,500 / 46, dated Oct. 4th, 1869, on " " " at " " for $7,000

(Signed in duplicate.) HARVEY & LIVES'Y.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in all *cases*, be stated under the head for 'Application.'"

I certify that the within account is correct and just, the articles to be (or have been) accounted for in my return for the quarter of 1869.

G. K. WARREN,
Major Engineers, &c.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 87, of the accounts of B'v't Maj. Gen. G. K. Warren, major Corps of Engin., for the 4th (Oct. 4) quarter of 1869. $9,010.75.

(Appropriation for Rock Island Bridge.)

The United States, for (1) *same, to Harvey & Livesey, Dr.*

Date.	Designation.	Application.	Cost.
1869.			*Dollars Cts.*
Nov. 30	For laying 546 cubic y'ds of stone on bridge pier @ $11	Constructing pier	6,006 00
	Lesss 10 per cent. withheld		600 60
			$5,405 40
	Contract made and entered into June 1st, 1869, and sent to 2nd Comptroller July 3d, 1869, by Ordnance Department.		

Received at Rock Island Illinois, this 30th day of November, 1869, from B'v't Brig. Gen'l G. K. Warren, maj. Corps Engineers, the sum of five thousand four hundred and five dollars and forty cents in full payment of the above account. Paid by check No. 63, dated November 30, 1869, on U. S. depositary at Chicago, Ill's, for $5,000. and part of ch'k No. 46, dated Oct. 4. 1869, on U. S. depositary at Chicago; Ill's, for $7,000.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditures is chargeable, and the particular *fort object* for which it was made, should be stated at the head of vouchers; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for "Application."

I certify that the above account is correct and just, the articles to be (or have been) accounted for in my return for the quarter of 1869.

G. K. WARREN,
Maj. Eng'rs, &c.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 88, of tee accounts B'v't Maj. Gen. G. K. Warren, major Corps of Engineers, for the 4th, (Nov. 30, 1869,) quarter of 1869. $5,405.40.

(Appropriation for Rock Island bridge.)

The United States, for (1) *same, to Harvey & Livesey, Dr.*

Date.	Designation.	Application.	Cost.
1869.			*Dollars Cts.*
October 8.	For breaking 45 c. y'ds stone for concrete, *a* $1.10 per yard.	For bridge piers.	49 50
	Retain 10 per c		4 95
			44 55
	Contract dated 1st June, 1869.		

Received, at Rock Island, Ill's, this 20th day of October, 1870, from J. N. Macomb, col. Corps of Engineers, the sum of forty-four dollars and fifty-five cents, in full payment of the above account, paid by check No. 70, dated 20th October, 1870, on depositary of U. S. at Chicago, Ill's, for $44.55.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular fort or object for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for 'Application.'"

I certify that the within account is correct and just, in my return for the quarter of 1871.

J. N. MACOMB,
Col. Eng. U. S. Army.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 1 of the accounts of J. N. Macomb, colonel Corps of Engineers, for the fourth quarter of 1870. $44.55. Office of the Chief of Engineers. Approved.

(Appropriation for Rock Island bridge.)

The United States, for (1) same, to Harvey & Livesey, Dr.

Date.	Designation-			Application.	Cost.
1870.					*Dollars Cts.*
October 8.	For stone, received and handled, 25 cubic yards, at $1.35 per y'd.			R. I. bridge piers.	33 75
	" stone dressed, 116 cubic yards, *a* $4.60 pr y'd..			.....	533 60
	" stone set, 177 c. y'ds *a* $11 .....$1,947 00				
	Deduct from above items amounts previously paid for:				
	Receiving & handling 177 c. y'ds. at $1.35 ..... $238 95				
	Dressing 46 c. y'ds, *a* $4.60 ..... 211 60				
		450 55			
	10 per c, previously retained..... 45 05				
			405 50		
					1,541 50
					2,108 85
	Retain 10 per cent			.....	210 88
					1,897 97
	Contract dated 1st June, 1869.				

Received, at Rock Island, Illinois, this 20th day of October, 1870, from J. N. Macomb, col. Corps of Engineers, the sum of eighteen hundred and nitety-seven dollars and ninety-seven cents, in full payment of the above account, paid by check No. 69, dated 20th October, 1870, on depositary of U. S. at Chicago, Ill's, for $1,897.97.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular fort or object for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for 'Application.'"

I certify that the within account is correct and just; the articles to be (or have been) accounted for in my return for the quarter of 1870.

J. N. MACOMB, *Col. Eng's.*

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 2 of the accounts of J. N. Macomb, col. Corps of Engineers, for the fourth quarter of 1870. $1,897.97. Office of the Chief of Eng's. Approved.

(Appropriation for Rock Island bridge.)

The United States, for (1) same, to Harvey & Livesey, Dr.

Date.	Designation.		Application.	Cost.
1870.				*Dollars. C'ts.*
October 8.	For extra work in dressing and setting stone in abutments, 2,241 superficial feet, *a* 75 c. p'r f't.		Abutments of Rock Island bridge.	1,680 75
	Deduct from above item am't paid on vouchr No 13, abst. No. 6, acc'ts of 3d q'r, 1870.....	$1,169 25		
	And 25 c. per foot for 1,226 feet, which has been dressed, but not set at time of United States taking the work.....	306 50		
				1,475 75
				205 00

Received, at Rock Island, Ill's, this 20th day of October, 1870, from J. N. Macomb, col. Corps of Engineers, the sum of two hundred and five dollars and cents, in full payment of the above account. Paid by check No. 72, dated 20th October, 1870, on depositary of U. S., at Chicago, Ill's, for $205.00.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for 'Applications.'"

I certify that the within account is correct and just, accounted for in my return for the quarter of 1870.

J. N. MACOMB,
Col. Engineers U. S. Army.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 4 of the accounts of J. N. Macomb, col. Corps of Engr's, for the 4th q'r, 1870. $205.

(Appropriation for Rock Island Bridge.)

The United States, for (1) same, to Harvey & Livsey, Dr.

Date.	Designation.	Application.	Cost.
1870. Sept. 30.	For extra work in dressing stone for abutments, 1,559 superficial feet, *a* 75 cents.	Abutments of Rock Island Bridge.	Dollars. Cts. 1,169 25

Received at Rock Island, Ill's, this 30th day of September, 1870, from J. N. Macomb, col. Corps of Engineers, the sum of eleven hundred and sixty-nine dollars and twenty-five cents, in full payment of the above account. Paid by check No. 57, dated 30th of September, 1870, on depositary of U. S., at Chicago, Ill's, for $1,16.925.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditurs is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for "Applications."

I certify that the within account is correct and just; the articles to be (or have been) accounted for in my return for the quarter of 187'.

J. N. MACOMB.
Col. Engineers U. S. Army

(Indorsed:) Appropriation for Rock Island bridge. for same Voucher No. 13 of the accounts of J. N. Macomb, col. Corps of Engineers, for the third quarter 1870. $1,169.25.

(Appropriation for Rock Island bridge.)

The United States, (1) for same, to Harvey & Livesey, Dr,

Date.	Designation.	Application.	Cost.
1870.			Dollars. Cts.
June 30.	For receiving and handling 369 cu. y'ds, stone, @ $1.35.	Construction of bridge piers.	498 15
	For dressing 204 cu. y ds, stone, @ $4.60,	.....	938 40
	Setting 818 cu. y'ds, @ $11.....$8,898 00		
	Deduct from above item amount previously paid for handling 818 cu. y'ds, @ $1.35.....$1,104 30		
	For dressing 260 cu. y'ds. $4.60.....$1,196 00		
	$2,300 30		
	10 p'r c't previously retained 230 03		
	2,070 27		
			6,927 73
			8,364 28
	Retain 10 p'r c't.....	.....	836 42
			$7,527 86
	Contract sent to 2d Comptroller July 3d, 1869, by Ord. Dep't. Contract dated June 1st, 1869.		
	For authority to make payments for unfinished work, see letter of Eng'r Dep't, herewith.		

Received, at Rock Island, Ill's, this 30th day of June, 1870, from Col. J. N. Macomb, Corps of Engineers, the sum of seven thousand five hundred and twenty-seven dollars and eighty-six cents, in full payment of the above account. Paid by part of check No. 6, dated June 30, 1870, on depositary of U. S. at Chicago, Ill's, for $7,622.43.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for 'Application.'"

I certify that the within account is correct and just; the articles to be, (or have been) accounted for in my return for the quarter of 186 .

J. N. MACOMB,
Col. Eng'rs, Bvt. Col. U. S. A.

(Indorsed:) Appropropriation for Rock Island bridge. For same. Voucher No. 16 of the accounts of J. N. Macomb, col. Corps of Engineers, for the 2d quarter of 1870. $7,527.86.

(Appropriations for Rock Island bridge.)

The United States, for (1) same, to Harvey and Livesey, Dr.

Date.	Designation.			Application.	Cost.
					Dollars. Cts.
1870.	Stone rec'd & h'ndled, 1,320 c yard *a* $1.35 per yd.			Bridge piers.	1,768 50
July 30.	" dressed 386 " " " $4.60 " "			.....	1,775 60
	" set, 1,318½ c. yds., *a* $13.00 p'r yd.		$17,140.50		
	Deduct from above item amount previously paid for receiving and handling 1,318.½ c yds *a* $1.35 per yd...	1,779 97			
	Dressing 485 c. yds., *a* $1.60...	2,231 00			
		4,010 97			
	10 p'r c. previously retained.	401 07			
			3,609 88		
					13,530 62
					17,074 72
	Retain 10 per c.....			....	1.707 47
	Contract dated June 1st, 1869.				$15,367 25

Received, at Rock Island, Ill's, this 30th day of July, 1870, from J. N. Macomb, col. Corps of Engineers, the sum of fifteen thousand three hundred and sixty-seven dollars and twenty-five cents, in full payment of the above account. Paid by check No. 14, dated July 30th, 1870, on depositary of the United States at Chicago, Ill's, for $2,500, and check No. 15, dated July 30th, 1870, on depositary of the United States at Chicago, Ill's, for $1,000; and check No. 18, dated July 30th, 1870, on depositary of the U. S. at Chicago, Ill's, for $10,000; and part of check No. 18½, dated July 30th, 1870, on depositary of the U. S. at Chicago, Ill's, for $1,998.22.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head for 'Application.'"

I certify that the within account is correct and just; the articles to be (or have been) accounted for in my return for the quarter of 186 .

J. N. MACOMB,
Col. Eng. U. S. A.

(Indorsed:) Appropriation for Rock Island bridge. Applied to same. Voucher No. 17, of the accounts of J. N. Macomb, Col. Corps of Engineers, for the third quarter of 1870. $15,367.25.

(Appropriation for Rock Island bridge.)

The United States, for (1) same, to Harvey & Livesey, Dr.

Date.	Designation.			Application.	Cost.
					Dollars. Cts.
1870.					
August 31.	Stone received and handled, 89 c. y'ds. @ $1.35 per y'd....			Bridge piers	120 15
	" dressed 303 " " @ $4.60 " "			"	1,393 80
	" set in draw-pier, 180 c. y'ds, @ $13 p'r y'd $2,340				
	" " " other piers, 512 " " @ $11 " " 5,632				
			7,972		
	Deduct from above items amounts previously paid for rec. & handling 692 c. y'ds, @ $1.35 p'r y'd....	$934 20			
	For dressing 534 c. y'ds, @ $4.60....	2,455 40			
		3,390 60			
	10 per cent. previously retained....	339 06			
			3,051 54		
					4,920 46
					6,434 41
	Retain 10 per c.			.....	643 44
					$5,790 97
	Contract dated 1st June, 1869.				

Received, at Rock Island, Illinois, this 31st day of August, 1870, from J. N. Macomb, Col. Corps of Engineers, the sum of five thousand seven hundred and ninety dollars and ninety-seven cents, in full payment of the above account. Paid by check No. 25, dated 31st August, 1870, on U. S. depositary at Chicago, Ill's, for $5,790.97.
(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or inteded to be used, must, in *all cases*, be stated under the head for 'Application.'"

I certify that the within account is correct and just; the articles to be (or have been) accounted for in my return for the quarter of 186 .

J. N. MACOMB,
Col. Eng. U. S. A.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 19, of the accounts of J. N. Macomb, Col. Corps of Engineers, for the 3rd quarter of 1870. $5,790.97.

(Appropriation for Rock Island bridge.)

The United States for (1) same, to Harvey & Livesey, Dr.

Date.	Designation.			Application.	Cost.
					Dolls. Cts.
1870. Sept. 30.	For stone received & handled, 259 cubic yards, @ $1.35 p'r c. y'd.			Piers & abutments, Rock Island bridge.	349 65
	" stone dressed, 364 cubic yards, @ $4.60 per y'd			.....	1,674 40
	" stone set, 384 c. y'ds, @ $11 p'r c. y'd.....		$4,224 00		
	" " " 58 " @ $13 " " "		754 00		
			4,978 00		
	Deduct am't previously paid for receiving & handling 412 cubic y'ds, at $1.35 p'r y'd.....	$593 70			
	Dressing 92 cubic y'ds, @ 4.60 p'r y'd	423 20			
		1,019 90			
	10 per c. previously retained.....	101 99	917 91		
					4,060 09
					6,084 14
	Retain 10 per c.....			.....	608 41
					5,475 73
	Contract dated 1st June, 1869.				

Received, at Rock Island, Illinois, this 30th day of September, 1870, from J. N. Macomb, Col. Corps of Engineers, the sum of five thousand four hundred & seventy-five dollars and seventy-three cents, in full payment of the above account. Paid by check No. 56, dated September 30th, 1870, on depository of U. S. at Chicago, Ill's, for $5,475.73.

(Signed in duplicate.) HARVEY & LIVESEY.

(1) NOTE.—The "appropriation to which the expenditure is chargeable, and the particular *fort* or *object* for which it was made, should be stated at the head of the voucher; and the purpose for which the articles purchased were used, or intended to be used, must, in *all cases*, be stated under the head of 'Application.'"

I certify that the within account is correct and just; the articles to be (or have been) accounted for in my return for the quarter of 1870.

J. N. MACOMB,
Col. Eng's U. S. A.

(Indorsed:) Appropriation for Rock Island bridge. For same. Voucher No. 30, of the account of J. N. Macomb, Col. Corps of Engineers, for the third quarter of 1870. $5,475.73.

Findings of Fact and Conclusions of Law, filed by the Court.

In this case the court finds the facts to be as follows:

In the month of May, 1869, in pursuance of law, T. J. Rodman, lieutenant-colonel of ordnance and brevet brigadier general, commanding the United States arsenal at Rock Island, Illinois, published the following advertisment:

PROPOSALS FOR BRIDGE MASONRY.

Sealed proposals will be received at this arsenal up to 10 o'clock, a. m,. on the 25th day of May, 1869, for the construction of the piers and abutments of the railroad and wagon-road bridge to be built to connect the island of Rock Island with the city of Davenport.

It is proposed to build, say five common piers, one draw-pier, and two abutments; the stone and cement required for the work will be furnished on railroad-cars on arsenal switch near the Island and at the proposed bridge, and the sand required for the cement will be furnished by the United States at or near the same point.

All masonry must be of the best quality of bridge masonry; the stones in each course must be well loaded, and each course well secured by dowels to the course below, under cut-water, and at lower end of piers, and the foundation-course must be fairly bedded and well secured to the rock-bed of the river, the work, as it progresses, being subject to the inspection and approval of the commanding officer of the arsenal, or such other officer or person as may be designed by proper authority.

Detailed information with regard to the general form and dimensions of the piers and abutments, and a profile of bed of river, can be obtained by personal application at the arsenal.

The total amount of masonry is estimated at about 10,000 cubic yards; all the piers and abutments will be required to be completed prior to the 1st day of December, 1869.

Parties making bids will state the price per cubic yard of solid masonry at which they are willing to complete the work, the United States furnishing the stone, cement, and sand, as above stipulated, and nothing more.

They will also make a bid, stating separately the price per cubic yard of solid masonry at which they will undertake to build the piers and abutments, the United States furnishing stone, cement, and sand as above; and the price at which they will agree to put in the necessary coffer-dams, with their protections.

Proposals will be indorsed, "Proposals for Bridge Masonry," and addressed to the undersigned.

The United States reserves the right to reject any bid not deemed satisfactory.

T. J. RODMAN,
Lt. Col. Ord., and Bvt. Brig. Gen.
U. S. A. Comd'g.

A true copy:

CLINTON COMLY,
Captain of Ordnance.

A true copy:

AMOS STICKNEY,
Capt. of Engineers, U. S. A.

In answer to said advertisment, the claimants transmitted to said Rodman the following written

"PROPOSAL.

"We propose to build the masonry of piers and abutments of the Rock Island bridge, as per annexed advertisment. Small piers and abutments per yard, $11; draw piers and abutments per yard, $13."

This proposal of claimants was accepted, and in pursuance thereof the contract was entered into between the claimants and the defendants, as alleged in and annexed to the petition.

On the 14th of June, 1869, the claimants began preparations for the prosecution of work under the said contract. Stone furnished by the defendant for the work was then arriving by railroad, and the claimants set men to work cutting it.

Between that day and the 22d of July following, the claimants obtained, for use about the work, a steamboat, flat-boats, derrick-boats, derricks, rigging for running-pumps, and other machinery and implements; and between those dates they were prosecuting work.

About the 17th of said July, General Rodman was relieved from the charge of the construction of the bridge by general Warren, of the Corps of Engineers; and on the 22d of that month the claimants were notified, in writing, by General Rodman, of that fact.

Under instruction from the War Depratment to General Warren, to suspend all work until he could submit to the Secretary of War a plan for carrying on the work, he caused the work to be suspended on the 22d of July by a notice, in writing, addressed to claimants by Major Stickney, the officer specially in charge, in the following terms:

"You will at once stop all work under your contract for constructing the piers of the bridge connecting Rock Island with the city of Davenport, and not resume work until you receive further instructions."

On the 31st of July General Warren was authorized by the War Department to proceed with the masonry and pier-work in accordance with said Warren's reccommendations; and on that day the claimants were informed by Major Stickney that orders had been given to the contractors for furnishing stone to resume its delivery, and the claimants were directed by said Stickney to be ready to receive the stone.

The aforesaid order of the 22d of July was complied with by the claimants so long as it was in force, except that during that time they were engaged in work upon their scows, and in preparing ma-

terial for coffer dams, and in making general preperation, such as overhauling their travelling machinery, boats &c. They were also engaged in preparing stone for laying and arranging in courses.

General Warren was occupied from the time he took charge of the work until the 22d of August, in making surveys, observations, and soundings, in order to the adoption of a general plan. On that day he caused notice to be given to claimants that the position of the abutment and first pier of the bridge, on the Iowa side, was determined and marked, ready for them to commence their construction. Before that day no plans and specifications had been fixed by the officers acting for the United States by which the masonry and pier-work of the bridge should be done.

The claimants were furnished, on the 4th of September, 1869, with the plan of said abutment and pier; and this was the first working plan with which they were furnished. No additional plan was furnished to them in 1869. They were engaged in work upon said abutment and pier until some time in December, 1869, except for a period of one month, in which the high water in the river prevented work. In said December the work was stopped by cold weather. The court finds that the delay until the 4th of September, 1869, in furnishing a working-plan, was unreasonable.

It was necessary, in order to the laying of the masonry of the abutments and piers, that a coffer-dam should be built for each abutment and pier, and the water pumped out of it, and the bed of the river prepared for laying the masonry of the abutment or pier thereon; and without such coffer-dams it was impracticable to construct any of the abutments or piers of said bridge.

On the 13th of September, the claimants addressed and sent to General Warren a letter in the following words:

(Exhibit "C.")

September 13, 1869.

SIR: Not waiving any damages the undersigned may have suffered by reason of the delay on the part of the United States, we are now ready to construct the piers and abutments for the new rail and wagon bridge, to be built to connect the island of Rock Island with the city of Davenport, under the contract entered into by the United States on the one part, and the undersigned on the other part, dated the first day of June, one thousand eight hundred and sixty-nine; and we hereby request that the United States shall forthwith construct the requisite coffer-dams, exhaust the water therefrom, and prepare the bed for said piers and abutments where necessary for the commencement of said work.

Very respectfully, yours,

HARVEY & LIVESEY.

Brevet Major General G. K. WARREN,
Major of Engineers United States Army.

"Endorsed,"

Received this 13th day of September, A. D. 1869, the original of which this is a copy.

To this letter Major Stickney, on the 14th of September, sentan-swer as follows:

OFFICE OF THE ROCK ISLAND BRIDGE,
ROCK ISLAND, ILL., *September* 14, 1869.

GENTS: Your letter of the 13th inst., addressed to Brevet Major General G. K. Warren, was received yesterday, and he has directed me to say that, after fully considering the subject of your letter and the contract entered into between yourselves and the United States, we are fully convinced that you, and not the United States, are required by said contract to construct the requisite coffer-dams, pump the water from the same, and prepare the beds for the piers and abutments.

Very respectfully, your obedient servant,

AMOS STICKNEY,
Captain of Engineers, Brevet Major U. S. Army.

Messrs. HARVEY & LIVESEY.

On the 15th of September, the claimants addressed and sent to General Warren the following written protest:

(Exhibit "E.")

September 15, 1869.

SIR: Whereas the undersigned claim that, under the contract entered into by the United States on the one part, and the undersigned of the other part, dated the 1st day of June, one thousand eight hundred and sixty-nine, to construct the piers and abutments for the new rail and wagon bridge, to be built to connect the island of Rock Island with the city of Davenport, the United States are obliged to build the requisite coffer-dams, pump the water therefrom, and prepare the beds, where necessary, for said piers and abutments;

And whereas, on the 13th day of September, A. D. 1869, we made demand in writing on the United States to build said dams, pump the water therefrom, and prepare said beds;

And whereas, the United States did, then and there, in writing, on the 14th day of September, refuse either to build said dams, pump the water therefrom, or prepare said beds;

Now, therefore, we do hereby protest against such refusal of the United States to build said dams, pump the water therefrom, and prepare said beds; and do hereby notify the United States that we shall proceed at once to build said dams, pump the water therefrom,

and prepare said beds, and shall hold the United States for the payment of the costs and expenses of the same.

Very respectfully, yours, &c.,

HARVEY & LIVESEY,

To Brevet Major General G. K. WARREN,
Major of Engineers, U. S. Army.

Upon a copy of said protest returned to the claimants, the following indorsement was made by General Warren:

"Received this 15th day of September, A. D. 1869, the original whereof this is a copy. And in order not to delay the work, I consent to the work going on until the matter can be referred to the United States Attorney-General; but in this consent it must be considered that nothing is admitted in favor of the claim of the contractors to their interpretation of the contract.

"G. K. WARREN,
"*Major Engineers and Brevet Major General U. S. Army,*
"*In charge construction of bridge.*"

Immediately upon the refusal of the officers in charge of the work to build the coffer-dams, and pump the water therefrom, and prepare the beds for the abutments and piers, the claimants proceeded to build the requisite coffer-dams; and all that was required in that respect while the work was in the hands of the claimants was done by them.

When proposals were invited by advertisement, as aforesaid, General Rodman had prepared certain plans of the bridge, intended to show the general form and dimensions of the piers and abutments, and a profile of the bed of the river; which plans were seen and inspected by the claimants before they sent in their proposal aforesaid.

The dimensions of the piers of said bridge, which were fixed upon on the 22d of August, 1869, and those which were, after that date, from time to time fixed upon, were less than the dimensions indicated in the plans prepared by General Rodman and shown to the claimants before they made their said proposal, but there was no reduction of the sizes which were fixed upon on the 22d of August, nor was there any reduction of the sizes thereafter adopted.

The claimants did not suffer damage by reason of having to perform a part of their work under said contract in cold and inclement weather.

The defendants did not, during the entire progress of the work under said contract, nor during any part of the time of said progress, cause long and repeated delays and stoppages in said work, by neglecting to furnish materials, as they had agreed to do.

On the 6th day of October, 1870, the claimants were notified in writing, by the officer in charge of the work on said bridge, that, in consequence of complaints that had reached the Chief of Engineers United States Army, of the tardy progress of the work upon the ma-

sonry of the bridge, the said officer had been required to take suitable and efficient measures to expedite the work; and in view of that requirement the officer in charge informed the claimants that he would take the work as it stood, and carry it on under the provision of the contract which contemplated such a change.

On the 7th of said October, the claimants, in writing, refused to give up said work; whereupon, on that day, the said officer notified them, in writing, that he would, the next morning at seven o'clock, take possession of the work for the Government, which he did, against the assent and protest of the claimants; and thenceforward the work was prosecuted by the officers of the Government.

The following payments were made by the Government to the claimants on account of work done by them under said contract:

October 4, 1869	$9,010 75
November 30, 1869	5,405 40
May 31, 1870	3,585 50
June 30, 1870	7,527 86
June 30, 1870	15,367 25
August 31, 1870	5,790 97
September 30, 1870	5,475 73
October 20, 1870	44 55
October 20, 1870	1,897 97
Total	54,105 98

Upon the foregoing facts, the court finds that the claimants suffered damage to the amount of twenty thousand and sixty-eight dollars, by reason of the delay and neglect specified in the first and sixth items of their demand, as set forth in their petition.

As to the fourth item of said demand, the court find that the claimants were not subjected to any increase on the cost of the work by having been compelled to do it in cold weather.

As to the fifth item of said demand, as amended, the court finds that the claimants, before their ejectment from said work by the orders emanating from the Department of War, had done work upon and for said bridge under said contract, to the amount of seventy-six thousand three hundred and forty-four dollars and forty-seven cents, the particulars of which are as follows:

Stone set in draw-pier, 1,556½ cubic yards, at $13 per yard	$20,234 50
Stone set in other piers, 2,599 cubic yards, at $11 per yard	28,589 00
Stone dressed, not set, 1,527 cubic yards, at $11 per yard, less $2.63 per yard, which it would have cost to set it	12,781 00

Stone received and handled, not set, and ready as backing to the 1,527 yards of the next preceding item, an equal quantity, viz, 1,527 cubic yards, at $11 per yard, less $2, which it would have cost to set it	13,743 00
Stone received and handled, not set, besides the amount stated in the next preceding item, 738½ cubic yards, at $1.35 per yard	996 97
Total	76,344 47

From which sum the defendants are entitled to deduct the sum of $54,105.98, being the aggregate of the payments made by them to the claimants on account of their work on said bridge; leaving a balance of $22,238.49 found by the court as due to the claimants under said item number five.

As to the eighth item of said demand, as stated in the petition, the court finds that the claimants were paid in full for all the extra work they did on and about the abutments and piers of said bridge.

And as conclusions of law upon the foregoing finding of facts, the court holds—

1. That the contract sued upon did not require the United States' but required the claimants, at their own expense, to put in cofferdams and protections, and to pump the water therefrom, and to prepare the beds for the piers and abutments which the claimants agreed to build.

2. That the reduction made in the dimensions of the piers and abutments of said bridge, as originally projected, was not, by the legal construction of the contract, wrongful to the claimants.

3. That the claimants did not sustain any damage by reason of the idleness of their tools, machinery, and vessels, after the 8th of October, 1870, which they would not have sustained had they on that day completed their work under said contract, or which was not incident to the termination, at any time, of their work under said contract.

4. That the claimants are not entitled to any recovery under the second, third, fourth, seventh, or eighth items of their demand, as stated in the petition.

5. That the claimants are entitled to recover of the defendants the sum of forty-two thousand three hundred and six dollars and forty-nine cents.

Judgment of the Court rendered June 4, 1873, in case No. 6284.

At a Court of Claims held at the Capitol, in the city of Washington, on the fourth day of June, A. D. 1873, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said James W. Harvey and James Livesey do have and recover of and from the United States the sum of forty-two thousand three hundred and six dollars and forty-nine cents, ($42,306.49.)

PLEADINGS IN CASE NO. 11,406.

JAMES W. HARVEY, AND JAMES LIVESEY,
vs.
THE UNITED STATES.

No. 11,406.
Filed—August 30, 1876.
J. R.

ORIGINAL PETITION.

The petioners, James W. Harvey and James Livesey, of the State of Wisconsin, heretofore doing doing business under the firm name of Harvey & Livesey, respectfully show:

That on the 14th day of December, 1870, they exhibited their petition in this court, and thereby set forth and alleged as follows:

"That on the first day of June, 1869, they entered into a contract with the United States, acting in that behalf by T. J. Rodman, a Lieutenant Colonel of the United States Army, whereby they agreed to do the masonry work in and about the construction of the piers and abutments for a bridge then to be built, to connect the island of Rock Island, in the Mississippi river, with the city of Davenport, in the State of Iowa.

"That said contract was made in the execution of a proposal made by claimants to the defendants in response to a public advertisement of defendants, inviting proposals for said work. That said advertisement also invited separate proposals for putting in the necessary coffer-dams and their protections, but that the petitioners bid, only, for said masonry work in the construction of said piers and abutments, and their said bid being the lowest one for said masonry work, it was accepted, and the said contract was awarded thereon.

"They were required and did execute and deliver a bond to the United States, in the sum of sixty thousand dollars, for the faithful performance of said contract.

"That the petitioners were ready to commence the work under said contract on the 7th day of June, 1869, and had expended large sums of money in and about said business; but that they were not provided with any plans or specifications, nor were the necessary locations of the piers and abutments made for commencing the work by the defendants, until the 14th of September, 1869, and the claimants, their workmen, tools and machinery, were kept idle during that time. That such delay on the part of the United States was unreasonable and in violation of the petitioners' rights, and that they have suffered damage in consequence of such delays, in the full sum of twenty-five thousand dollars.

"That about the 13th day of September, 1869, the United States having furnished materials sufficient to commence the construction of said piers and abutments, the petitioners requested the agent of the defendants to put in or cause to be put in the necessary coffer-dams, and to pump the water therefrom, and prepare beds for said piers and abutments, to enable petitioners to proceed with the performance of their contract. But the United States refused to put in such coffer-dams and pump the water therefrom, and refused to prepare said beds, pretending that petitioners were bound, under said contract, to put in said coffer-dams. The petitioners thereupon protested against such wrongful construction of said contract, but at the special request of the defendants, and relying upon the good faith of the United States, they undertook to, and did put in the necessary coffer-dams and protections, and pump the water therefrom, and did prepare the beds for said piers and abutments; that the labor and materials expended in putting in said coffer-dams and protections and pumping water and preparing beds as aforesaid, was reasonably worth and they are entitled to recover for the same, from the United States, the sum of seventy-five thousand dollars.

"That they were informed by the United States prior to the making of said proposal, that the draw-pier would be four hundred and seventy-four feet long and fifty-six feet wide, and that the five common piers would be each seventy-four feet long and fourteen feet wide; and that, with the abutments, there would be not less than ten thousand cubic yards of masonry work; and that petitioners based their estimates for said work upon such information, and made their said proposal in the belief that said piers and abutments would be constructed according to such dimensions. But they allege that the defendants, on or about the 22d day of July, 1869, transferred the supervision of said work from the Ordnance Bureau to the Bureau of Engineers, and that the petitioners, although they were at all times ready and anxious to proceed with said work, were kept waiting from the 7th day of June, 1869, until September 7th, 1869, as aforesaid, and that, on or about the said 7th day of September, 1869, the defendants marked out the location for one pier and one abutment only, and wrongfully reduced the dimensions of all the said piers and abutments, so that, instead of measuring ten thousand cubic yards, they measured only about six thousand five hundred; and that, by reason of said reduction by said defendants, in the dimensions of said piers and abutments, the petitioners have been damaged in the full sum of thirty-three thousand six hundred dollars.

"That the defendants failed, for an unreasonable time, to furnish materials for petitioners, in accordance with the said contract, and caused other delays, as hereinbefore set forth, to the plaintiffs in and about said work, in consequence of which unreasonable delays, the petitioners were compelled to perform a large part of said work in and during cold and inclement weather, and by reason thereof they

have been greatly injured, to wit, in the sum of fifteen thousand dollars.

"That they proceeded, with great diligence on their part, and as fast as they reasonably could, to construct said piers and abutments, in accordance with the plans and specifications and requirements of the defendants. That they could have made more rapid progress therewith, had the defendants located said piers and abutments and furnished the materials and drawings for the same, as they were desired to do by plaintiffs, and as they were bound to do. That they were performing their said contract in good faith, and had prosecuted the said work with great diligence, as aforesaid, until on or about the 7th day of October, 1870, when, without any just cause, and without any default on the part of the plaintiffs, the United States drove them from the said work, and took possession thereof, and have ever since maintained and still maintain possession thereof. And said defendants have unlawfully undertaken to complete said work themselves. And at the time of the wrongful stoppage of said work, as aforesaid, the plaintiffs had made great progress towards the completion of the said piers and abutments, and had done work thereon to the value of fifty-two thousand eight hundred dollars, which sum they are entitled to recover from the defendants.

"That petitioners were fully able, and were willing and anxious, to complete the said masonry work in accordance with the terms and stipulations of said contract at the time of said ejectment, and that all the work done by them, as aforesaid, up to that time, was approved and accepted by the defendants.

"That, during the entire progress of the work under said contract, the defendants, by neglecting to furnish materials as they had agreed to do, in said contract, caused long and repeated delays and stoppages in said work, whereby the petitioners, their workmen, and machinery, were kept in idleness, and at great expense to the plaintiffs, and by reason of said delays, the petitioners have suffered damage in the sum of fifteen thousand dollars.

"That, at the time of the ejectment of the plaintiffs from said work, as aforesaid, they were fully provided with tools, machinery, and vessels of great value, necessary and convenient to fulfil said contract, and that they had employed and collected, at great cost to petitioners, a large number of skillful workmen, who were engaged upon said work. That when the said work was taken from them, these workmen became scattered, and their said tools, machinery, and vessels became, and still continue to be, idle and unemployed, and, from want of care and from exposure, have become almost valueless; and they have suffered injury in consequence of the said damage to and idleness of their tools, machinery, and vessels, in the sum of twenty-five thousand dollars.

"That, during the progress of the said work, the defendants requested plaintiffs to dress the stones for the coping and also the noses of the piers below low water, and also the corners of the abutments, which work was not required by the contract to be done with cut

stone. And plaintiffs, upon such request, dressed said stones, and the defendants promised to pay them so much as the same might be reasonably worth. And the plaintiffs allege that such extra work was reasonably worth the sum of five thousand dollars."

The defendant having joined issue upon the allegations in said petion, and the testimony having been closed on both sides, the cause was regularly brought on for hearing. After argument by counsel and consideration by the court, a judgment was rendered in favor of the plaintiffs and against the United States, for the sum of forty-two thousand three hundred and six dollars and forty-nine cents, the said amount being allowed for damages to the plaintiffs caused by unreasonable delays of the defendant, and for work actually done upon and for said bridge, all of which will more fully and at large appear, reference being had to the records of this court in said cause.

That the said judgment was paid to plaintiffs according to law.

That afterwards, the claimants petitioned the Congress of the United States for further relief in the premises, and thereupon an act was passed [and approved August 14, 1876] referring the claim of the plaintiffs to this court for hearing and adjudication, and authorizing this court to proceed in the adjustment of the accounts between these claimants and the United States, as a court of equity jurisdiction, with power to reform said contract and render such judgment as justice and right may require.

The plaintiffs allege that there is still justly due to them from the United States, a large sum of money for damages and for work and materials, and in addition to the charges made in the aforesaid original petition, they say that connected with the pivot pier of said bridge there were large walls of stone masonry and crib work, connecting the upper and lower rests of the pivot pier with the pivot thereof, which were constructed mainly of irregular or rip-rap masonry. And that to finish the abutment on the Iowa shore, wing-walls, constructed of "rip-rap" masonry, were necessary, all of which was a part of the plaintiffs' work under the contract. That this work being cheap and easily done, the officers in charge of said work in behalf of the United States refused to permit the plaintiffs to do it, and employed laborers and constructed the same for the United States, and thus unjustly and unlawfully deprived the plaintiffs of large profits, which they otherwise would have made. They allege that they could have made, on the said work, the sum of $51,000 in profits.

The plaintiffs aver that there is justly and equitably due to them from the United States, on account of the premises, and in addition to the amount already paid to them, the sum of $239,600, with interest, according to the following specifications, to wit:

1.

For labor done, and materials furnished by the plaintiffs, in constructing the coffer-dams, and in performing the work necessarily connected therewith, and preliminary to the masonry work for said piers and abutments $75,000 00

2.

For loss and damages resulting to the claimants in consequence of the reduction of the dimensions of the piers and abutments, made subsequently to the making of the contract 33,600 00

3.

For loss of machinery, vessels, and tools, caused by taking from the plaintiffs the work under their contract. 25,000 00

4

For extra work—dressing coping and corners of abutments, and dressing noses of piers under water, [this work not being required by the contract,] 5,000 00

5

For the profits they could have made had they been permitted to build the cross-walls and crib-work connecting the upper and lower rests with the pivot, [part of the contract,] 48,000 00

6

For profits they might have made had they been permitted to construct the wings-walls for the Iowa shore abutment. These walls were "rip-rap," and a part of the work under the contract, out of which liberal profits could have been made; the agents of the United States performed the work, ... 3,000 00

7

For profits they might have made had they been permitted to complete the work according to the intention of the parties and the terms of the contract, in addition to the foregoing charges, ... 50,000 00

$239,600 00

8

For interest on the amount found due to the plaintiffs on an equitable adjustment of accounts between the parties, from October 6th, 1870, until the date of the judgment of this court, at the rate of (6) per centum per annum.,.....

The petitioners therefore claim judgment against the United States for the sum of $239,600 00, with interest thereon, at six per centum per annum; and they pray the court to reform the said contract, if the same be necessary, so as to make the same conform to the intention of the parties, and to be in consonance with justice and equity; and for such other and further or general relief as in justice and right they may be entitled to have.

The petitioners further show, that they presented this claim to the War Department for payment, and payment thereof was refused; that they are sole owners of said claim and have never assigned or disposed of it, or any part of it, to any person; that they have at all times borne true allegiance to the government of the United States, and that they have not at any time or in any way voluntarily aided, abetted, or given encouragement to the rebellion against the United States.

JAMES W. HARVEY.
JAMES LIVESEY.

ENOCH TOTTEN, *Counsel for Plaintiffs*,
Washington, C. C.

STATE OF WISCONSIN, } *ss*:
County of Dane, }

I, James W. Harvey, being first duly sworn, do depose and say, that I am one of the claimants named in the foregoing petition; that no assignment or transfer of said claim or interest therein, has been made. That said Harvey & Livesey are justly entitled to recover from the United States the amount in said petition claimed, after allowing all just credits and offsets, and I believe the facts stated in said petition are true.

JAMES W. HARVEY.

Subscribed and sworn to by James W. Harvey, before me, this 26th day of August, 1876.

JOHN. J. SUHR,
Notary Public, Dane County, Wisconsin.

Traverse.—Filed Sept. 12, 1876.

And now comes the attorney-general on behalf of the United States and makes answer to the petition of the claimants herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of two hundred and thirty-nine thousand six hundred dollars, with certain interest, says that they are not indebted to the said claimants in the said sum of money, or any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to the rebellion against the said Government, denies the said allegation.

THOMAS SIMMONS,
Ass't Att'y General.

Demurrer.—Filed by Defendants, Nov. 14, 1876.

And the said defendants, by their attorney-general, say that the petition in this cause does not allege facts sufficient to *to* constitute a cause of action.

THOMAS SIMONS,
Ass't Att'y. Gen'l.

Withdrawal of Traverse filed Sept. 12, 1876.

And now, to wit: December 4, 1876, the general traverse heretofore filed in this case, is by leave of court, withdrawn by Mr. Ass't Att'y-General Simons for the defendants.

Order of court sustaining the Demurrer, and granting leave to Claimants to amend Petition.

And now, to wit, January 8, 1877, Judge Knott read the opinion of the court, and it was ordered that the demurrer to the petition be sustained, with leave to the claimants to amend. Judge Loring read a dissenting opinion.

Amendment to original Petition.—Filed Feb. 5, 1877.

The claimants in this cause, in pursuance of the opinion and order of the court, on the demurrer heretofore filed by the defendants to the original petition, now amend their said petition by adding thereto the following allegations, to wit:

The contract mentioned in the original petition in this cause was intended to carry out and execute the specifications and agreements contained in a certain advertisement or invitation for proposals for constructing the piers and abutments of the said bridge, published by the defendants, and in a bid made in pursuance thereof by the plaintiffs.

The agents of the United States by said advertisement, requested the persons bidding in pursuance thereof to state, (1) the price per cubic yard of solid masonry at which they were willing to complete the work; (2) the price per cubic yard of solid masonry at which they were willing to build the piers and abutments, and (3) the price at which they were willing to put in the necessary coffer-dams and protections. The said invitation for proposals also apprised the bidders

that detailed information as to the general form and dimensions of the piers and abutments, and a profile of the bed of the river, would be exhibited to them at the arsenal.

In pursuance of that part of the said invitation which referred to the work of building the solid masonry of the piers and abutments, and after having first obtained from the defendants' agents detailed information touching the form and dimensions of the proposed piers and abutments, and after having examined the profile of the bed of the river exhibited by the defendants, the plaintiffs, on the 29th day of May, 1869, submitted to the proper officers of the United States a proposal in writing, whereby they offered to build (only) the masonry of the said piers and abutments, upon the terms following, to wit: The small piers and abutments at and for the sum of eleven dollars per yard, and the draw-pier at and for the sum of thirteen dollars per yard. The said proposal was accepted by the defendants, and the said contract, in the original petition described, was prepared in the office of the agent of the United States by a clerk therein employed, but, in consequence of accident and mistake, the said contract was so drawn as to depart from the intention of the parties and from the terms and specifications in said invitation and proposal contained. Instead of requiring the plaintiffs to perform the labor and furnish the materials contemplated by the said invitation and proposal, and in the manner specified therein, the language employed in said contract inequitably required the plaintiffs "to construct the said piers and abutments * * * in accordance with such plans and specifications as may [might] be fixed by proper authority acting for the United States." The plaintiffs did not discover the peculiar language of the said contract until long after the work had been in progress, nor did they ever believe that they were bound by said contract to do any more work, or furnish any more materials, or that they were obliged to perform the work in any other manner than as specified and contemplated in the said invitation and proposal, until the judgment of this court compelled them to submit to said construction. When the officers of the defendant first claimed for the said contract the strict construction aforesaid, the plaintiffs protested, and refused to proceed any further with the work, but the said officers, by promises, (which they never kept,) induced the plaintiffs to go on, notwithstanding the dispute, and they accordingly did proceed, and they were required by the agents of the United States to construct the coffer-dams and do all other work and furnish all other materials preliminary to building the solid masonry for said piers and abutments, and to construct said piers and abutments on very materially different plans and in different localities from those contemplated by the parties at the time of making said proposals, and said piers and abutments so built were, in consequence of the alterations in the form and locality thereof, much more expensive to the plaintiffs, for which no allowance has ever been made to them. Through the error and mistake aforesaid, the defendants were given an unfair and unconscionable advantage over the plaint-

iffs, and have obtained the materials, labor, and skill of the plaintiffs, of great value, and have paid nothing for them.

The labor performed and the materials furnished by the plaintiffs for the United States in putting in said coffer-dams and furnishing the other materials and performing the other work preliminary to building the masonry of said piers and abutments, were reasonably worth the sum of seventy-five thousand dollars; and the work done and materials furnished by them for the United States in and about the masonry of said piers and abutments were reasonably worth, in consequence of the change of locality and of plans and specifications unlawfully made by the defendants under the erroneous provisions of said contract, the sum of thirty-three thousand and eight hundred dollars, over and above the sums which the plaintiffs have already been paid therefor.

The plaintiffs therefore pray, that the said contract may be so reformed as to correspond with the intention of the parties, and that they may be paid for the labor and materials by them performed and furnished upon the said bridge.

They further pray, that they may have such other and further relief, and paid such other and further sums of money, as may be agreeable to equity and good conscience, and as the provisions of said act of Congress may authorize and require.

JAMES W. HARVEY,
JAMES LIVESEY,
By E. T.

ENOCH TOTTEN, *Attorney for Plaintiffs,*
Washington, D. C.

STATE OF WISCONSIN, } ss:
County of Dane. }

I, James W. Harvey, being first duly sworn, do depose and say, that I am one of the claimants in the foregoing amendment to the original petition; that no assignment or transfer of said claim or interest therein has been made; that said Harvey & Livesey are justly entitled to recover from the United States the amount claimed in said amendment to the original petition, after allowing all just credits and offsets, and I believe the facts stated in said amendment are true.

JAMES W. HARVEY.

STATE OF WISCONSIN, } ss:
County of Dane. }

James W. Harvey, one of the plaintiffs in the above cause, subscribed and made oath to the foregoing before me, this 22d day of January, 1877.

[SEAL.]

B. ESSER,
Clerk of Circuit Court, Dane Co.

Traverse of amended Petition.—Filed April 7, 1877.

And now comes the attorney general, on behalf of the United States, and makes answer to the petition of the claimants herein, and not confessing the same, or any part thereof, denies each and every of the allegations therein contained, and calls for strict proof of the same. And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of two hundred and thirty-nine thousand and six hundred dollars, with certain interest, says that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney General.

Plea of limitation.—Filed January 18, 1877.

Now come the defendants, by their attorney general, and say that the claimants herein should not further have or maintain their suit against the defendants, for the reason that the petition of the claimants was not filed in this court, nor transmitted to it, within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney General.

Motion for leave to file second amended Petition.—Filed and allowed March 23, 1878.

And now come the plaintiffs and move the court for leave to file a second amendment to their declaration, as requested and suggested by the court, the same being presented herewith.

ENOCH TOTTEN
Att'y for Plaintiffs.

Allowed March 23, 1878.

Second amendment to Petition.—Filed March 23, 1878.

The second amendment to the petition of the claimants in the above entitled cause, made and filed in obedience to the suggestions

and directions of the court, respectfully shows and states, in addition to what is contained in the original petition and first amendment thereto, as follows, to wit:

First. By the terms of the advertisement inviting proposals, the proposal of the plaintiffs and the acceptance thereof by the defendant, as alleged in the original petition herein and the amendment thereto, a preliminary agreement was made between the plaintiffs and the defendant, by which the plaintiffs agreed to build the masonry work of the piers and abutments of the said bridge at Rock Island, for the prices stated in the said original petition and the amendment thereto, and according to certain plans showing the general form and dimensions of the piers and abutments and their locations in the river; and according to a profile showing the bed of the river at the place where the work was to be done, which plans and profile were, before the making of the proposal, exhibited by the defendant to the plaintiffs, and were by them inspected, to enable them to prepare their estimates for making their said proposal.

And the United States thereby agreed to furnish the stone, cement, and sand for said masonry work, and also to erect and put in the necessary coffer-dams, with their protections, and to perform the preliminary work necessary to enable the plaintiffs to build the said masonry work according to their said proposal and according to said general plans, and at the location in the river indicated by said plans and profile.

Second. For the purpose and with the intent and design of carrying into effect said agreement thus made as aforesaid, a formal contract was prepared by the officers of the United States, which was afterwards signed and delivered by both parties; but, by accident and mistake, the said contract did not conform to the terms of said previous agreement, nor to the intention of the parties.

The said contract was, by such accident and mistake, so drawn as to impose upon the plaintiffs the burthen and expense of constructing and putting in the necessary coffer-dams with their protections, and of performing the preliminary work connected therewith, instead of requiring the United States to put in said coffer-dams and perform said preliminary work as had been previously agreed upon, and as was intended by the parties. The cost of constructing and putting in said coffer-dams with their protections and doing the preliminary work connected therewith, was as great if not greater than the cost of building the masonry work, and, in consequence of the said accident and mistake, the United States obtained an unconscionable advantage over the defendants, and compelled them to do work and furnish materials which they never intended to do, and for one-half the compensation the said work and materials were really worth. And the said contract, through accident and mistake, was so drawn as to require the plaintiffs to build the said piers and abutments in accordance with such plans and specifications as might be fixed by the officers of the United States, instead of requiring the United States to provide plans, and the plaintiffs to do their work, according

to the general plans and profile exhibited to the plaintiffs, as aforesaid, and at the location in the river agreed upon, as was the intention of the parties, and as had been previously agreed upon by the parties. And the defendant, through said accident and mistake, has obtained an inequitable and unconscionable advantage over the plaintiffs, and in the construction of the said bridge changed its locality further down the river and into deeper water, and reduced the dimensions of the piers and abutments, as prescribed by said original plans, in such a manner as to preserve the cut-stone or expensive portion of the work, and to greatly reduce the quantity of rough, inexpensive work, through which alone profit could be derived by the plaintiffs, and thereby inflicted great injury upon the plaintiffs.

The petitioners submit to the court that they are entitled to have said contract reformed, so as to make it conform to the intention and to the agreement of the parties, as expressed in the said invitation for proposals, and the bid of the plaintiffs submitted in response thereto, and the acceptance thereof by the defendant, and to have the same judgment and relief as to the said coffer-dams and the work of constructing the piers and abutments as if the said formal contract had conformed to the said preliminary agreement and had contained the necessary provisions requiring the defendant to construct and put in the necessary coffer-dams and to perform the preliminary work connected therewith, and so as to conform in all things in reference to the construction of said bridge and piers and abutments, to the said original and general plans of said bridge, and to the profile of said river-bed, and to the location thereby indicated.

And the petitioners claim such other and further relief in the premises as their case may require, and as may be authorized by the terms of the said act of Congress passed for their relief.

JAMES W. HARVEY.
JAMES LIVESEY.

ENOCH TOTTEN,
Counsel for Claimants.

STATE OF WISCONSIN, } *ss.:*
County of Dane, }

I, James W. Harvey, being duly sworn, do depose and say that I am one of the plaintiffs in the above entitled cause, and the allegations contained in the foregoing amendment are true.

Subscribed and sworn to before me this 16th day of March, 1878

{ SEAL OF CIRCUIT COURT, DANE CO., WIS. }

WM. A. WHEELER,
Deputy Clerk.

Traverse of second amended Petition.—Filed April 9, 1878.

And now comes the attorney general, on behalf of the United States, and answering the second amended petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the said amended petition be dismissed.

THOMAS SIMONS,
Assistant Attorney General.

Motion for leave to use testimony taken in former trial, in case No. 6284 filed March 10, 1877. Allowed March 19, 1877.

And now come the said plaintiffs, by their counsel, and move the court—

1. That the the testimony taken and filed in the case of Harvey & Livesey *vs.* The United States, heretofore tried and determined in this court, (being cause No. 6284,) may be read and considered in this cause at the hearing thereof, so far as the same shall be considered applicable, with the same force and effect as if the same had been taken to be used herein; but it shall be subject to the same objections and exceptions as if originally taken in this cause; but such order shall not limit the right of either party to take additional evidence in the case, or to recall and re-examine any witness therein.

2. That this cause may be placed upon the trial docket for the month of April, 1877, provided a printed brief in behalf of the plaintiffs shall be filed ten days prior to the first day of said month of April.

ENOCH TOTTEN,
Attorney for Plaintiffs.

And now, to wit: March 19, 1877, the motion for leave to use the testimony heretofore taken in this case in No. 6284, so far as the same shall be considered applicable, with the same force and effect as if taken herein, is allowed.

Opinion of the Court—In Equity.

Davis, J., delivered the opinion of the court, May 13, 1878:

This case comes before the court as a court of equity, under the provisions of "An act for the relief of James W. Harvey and James Livesey, of the firm of Harvey & Livesey, of Wisconsin," approved August 14, 1876, of which the following is a copy:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the claim of James W. Harvey and James Livesey, for alleged labor done and materials furnished, under their contract with the United States for the building of the masonry-work for the piers and abutments of the bridge

across the Mississippi River from Rock Island, Ill., to Davenport, Iowa, bearing date June first, eighteen hundred and sixty-nine, be, and the same is hereby, referred to the Court of Claims, for hearing and adjudication; and to that end jurisdiction is hereby conferred on said court to proceed in the adjustment of the accounts between said claimants and the United States, as a court of equity jurisdiction; and may, if according to the rules and principles of equity jurisprudence, in its judicial discretion, reform said contract and render such judgment as justice and right between the claimants and the said government may require."

In the month of May,1869, Brevet Brigadier General Rodman, Lieutenant-Colonel of Ordnance, in command of the United States arsenal at Rock Island, Illinois, caused to be published the following advertisement in pursuance of law:

PROPOSALS FOR BRIDGE MASONRY.

"Sealed proposals will be received at this arsenal up to 10 o'clock, a. m., on the 25th day of May, 1869, for the construction of the piers and abutments of the railroad and wagon-road bridge to be built to connect the island of Rock Island with the city of Davenport.

"It is proposed to build, say five common piers, one draw-pier and two abutments: the stone and cement required for the work will be furnished on railroad-cars on arsenal switch near the island and at the proposed bridge, and the sand required for the cement will be furnished by the United States at or near the same point.

"All masonry must be of the best quality of bridge masonry; the stones in each course must be well loaded, and each course well secured by dowels to the course below, under cut-water, and at lower end of piers, and the foundation-course must be fairly bedded and well secured to the rock-bed of the river, the work, as it progresses, being subject to the inspection and approval of the commanding officer of the arsenal, or such other officer or person as may be designated by proper authority.

"Detailed information with regard to the general form and dimensions of the piers and abutments, and a profile of bed of river, can be obtained by personal application at the arsenal.

"The total amount of masonry is estimated at about 10,000 cubic yards; all the piers and abutments will be required to be completed prior to the 1st day of December, 1869.

"Parties making bids will state the price per cubic yard of solid masonry at which they are willing to complete the work, the United States furnishing the stone, cement, and sand, as above stipulated, and nothing more.

"They will also make a bid, stating separately the price per cubic yard of solid masonry at which they will undertake to build the piers and abutments, the United States furnishing stone, cement, and sand as above, and the price at which they will agree to put in the necessary coffer-dams, with their protections.

"Proposals will be indorsed; "'Proposals for bridge masonry,'" and addressed to the undersigned.

"The United States reserves the right to reject any bid not deemed satisfactory.

"T. J. RODMAN,

"*Lieutenant Colonel of Ordnance and Brevet Brigadier General*
"*United States Army, Commanding.*"

General plans of the proposed piers and abutments, and a profile of the bed of the river, were prepared by General Rodman for the examination of persons proposing to bid. General Rodman also prepared an estimate of the probable cost of the bridge complete, including the sand, stone, and cement for the masonry. This was prepared for the use of the defendant's agents, at Washington, and does not appear to have come to the claimants' knowledge until furnished in answer to the call of this court on motion of the claimants' attorney. This estimate related to three forms of structure: one for a double-track railroad, with a wagon road over it; one for a single track railroad, with a wagon road over it; and one for a single track road, with a wagon road under it. In each the masonry was estimated at $24 the cubic yard, including the sand, &c., as above.

Only two sets of bids were offered in response to the advertisement. One set, by Reynolds, Saulpaugh & Co., following the terms of the advertisement, bid, for "solid masonry, $19.10 per cubic yard, in the work complete, the United States furnishing the stone, cement, and sand, as stipulated, and nothing more;" and, as "per second plan," "solid masonry at $12.70 per cubic yard in the work complete, the United States furnishing the stone, cement, and sand;" "and build the coffer-dams," for $63,700.

The other bid was made by the claimants, and was in the following form: "We propose to build the masonry of piers and abutments of the Rock Island bridge, as per annexed advertisement: small peirs and abutments, per yard, $11; draw-piers and abutments, per yard, $13."

The bids were opened sometime in the month of May, 1869, at General Rodman's office, on Rock Island, both the claimants and General Rodman being present. After opening the bids General Rodman said that the bid of Reynolds, Saulpaugh & Co. was high, and that the claimants' bid was very low; and he asked the claimants if they understood what they were bidding on, or understood their business, and whether their bondsmen knew? They answered that they did. General Rodman then said that he would look over the bids again and let the claimants know in a few days.

One John L. Davies, a lumber manufacturer, was also present at the opening of said bids, and, following the claimant Harvey out of General Rodman's office, asked him "when he got ready to buy his lumber for coffer-dams," to give him (Davies) a call. Harvey replied that he would.

The claimants' bid was accepted. A contract was then drafted

by one of General Rodman's clerks. A rough draft of this was submitted to the claimants, and on their returning it as satisfactory, the engrossed copies were prepared for signature, and the contracts were executed and interchanged, bearing date the 1st day of June, 1869.

The following clauses contain the only part material for our present consideration.

"The parties of the first part do hereby contract and engage with the said United States to construct the piers and abutments for the new rail and wagon bridge, to be built to connect the island of Rock Island with the city of Davenport, in accordance with such plans and specifications as may be fixed by proper authority acting for the United States. The United States to furnish stone, cement, sand, and all necessary templets required for the work, and nothing more. * * * The character of the work to be daily inspected as it progresses, by such officer or other person as the commanding officer of the Rock Island arsenal, or other authority appointed by the United States, may designate; such inspector to have full authority to give any directions with regard to the character or manner of conducting the work. The whole work to be completed prior to the first day of December next, provided that the stone shall be delivered at the rate of 2,000 cubic yards per month; and in case of any failure on the part of the United States to deliver this amount of stone, then the work to be completed as soon after the first day of December next as practicable. * * * Payment in such funds as the Treasury Department may provide, at the rate of thirteen (13) dollars per cubic yard for all masonry in the draw-pier, and at the rate of eleven (11) dollars per cubic yard for all other masonry.

"It is further stipulated and agreed, that if any default shall be made by the parties of the first part in the performance of their work specified in this contract, of the quality and at the times and places therein provided, that then, in that case, the United States shall have the right to take entire and exclusive charge of the work and to complete it in accordance with the conditions prescribed by this contract, charging us with the entire cost of completing it, and crediting us with the amount per cubic yard heretofore stipulated to be paid us for the completing of the work."

On the 6th June, 1869, the claimants began preparations for the prosecution of work under said contract. Stone furnished by the defendant for the work was then arriving by railroad, and the claimants set men to work cutting it.

On or about the 17th of July, 1869, the charge of the construction of the said bridge was transferred from the Ordnance Bureau to the Bureau of Engineers, in the War Department, and General Rodman, of the former branch of the service, was relieved by General Warren, of the latter branch, and General Rodman has since died. Just before or about the time of the transfer, the claimants purchased of a contractor who had been building a bridge at Quincy a large amount

of machinery in mass for bridge building, including, among other things, a pile-driving boat with engine and boiler and necessary apparatus for pile-driving, and two flat-boats. This machinery arrived at Rock Island before the 21st day of July, 1869, and the engine, which had on it a proper rigging for running pumps, was subsequently used there for pumping out the coffer-dams. On the 22d day of the same July, the claimants were notified of the change which had taken place in the direction of the work, and were ordered to suspend work until further instructions. This suspension was made in order to enable General Warren to make further examinations, so as to reduce the cost of the proposed structure by a change in the plans and specifications. On the 31st of the same July, the claimants were notified by direction of General Warren that they could proceed with the work; but it was not until the 22d of the following August that any new plans and specifications were determined upon by the officers of the United States charged with the construction of the bridge; and then only the plans for the Iowa abutment and pier.

Between the 22d of July and the 23d of August, 1869, Major Stickney, the officer in immediate charge of the construction, saw the claimants three or four times. The claimants at these interviews made no suggestion that the defendant was bound to construct the coffer-dams. It does not even appear that coffer-dams were mentioned in the interviews. On the said 23d August, as is testified by Major Stickney, the claimants had made no "preparations for building dams, with the exception of an engine boat; that is, a boat with an engine and pile-driver on it." About that time they commenced "building a crib to serve as a breakwater," and also began "to construct a dredging machine, which was attached to their engine-boat, to procure filling for the walls of the dam." The dredging machine was completed and attached to the boat and connected with the steam-engine prior to the 13th of the following September. Before the last-named day the claimants also had on the ground "material for coffer-dams, considerable of which had been prepared to put in the dam."

On the 4th day of September, 1869, the claimants were furnished with the first working plan under the new plan and specifications by General Warren. These new plans and specifications varied materially from those by General Rodman, in several respects. The variation which, under the rulings of this court to be hereafter noticed, is the subject of controversy in this suit, consists of a narrowing in the breadth of the piers, whereby the amount of expensive stone-work in the cut-facings was but slightly decreased, while the quantity of rough work for backing and filling, which was less expensive work, was decreased in much greater proportion. The latter in all the masonry was reduced one-half. The dimensions of the necessary coffer-dams were also proportionately reduced. The general nature of the changes are stated by the testimony of General Warren. It is not necessary to refer to them in detail.

On or about the 4th day of September, 1869, one of the claimants

informed Major Stickney that, in the opinion of the claimants, the United States should construct the coffer-dams. Major Stickney, in his account of the interview, adds that at the time the claimants "merely expressed an opinion, and made no claim that the United States should do this work."

In two or three conversations which took place between Major Stickney and the claimants, between the 4th and 13th September, 1869, they said that they thought that the United States ought to pump out the water and prepare the beds for the masonry, and they, or one of them, stated that they thought the Government should build the dams. Stickney told them that he did not agree to their position.

The complainants also complained to Major Stickney in conversations, the date of which is not given, that "the masonry was greatly reduced from what it would have been according to the plans of General Rodman, and that this reduction bore hard upon them, especially because the main amount of the reduction was in backing or rough work, and they requested that they should be allowed more pay for the work done in order to make up for the difference in the quantity. He told them that he could not pay except in accordance with the contract, but that he was willing to recommend that they should re-receive some compensation for this difference."

On the 13th September, 1869, the claimants addressed and sent to General Warren a letter in the following words:

"*September 13, 1869.*

"SIR: Not waiving any damages the undersigned may have suffered by reason of the delay on the part of the United States, we are now ready to construct the piers and abutments for the new rail and wagon bridge to be built, to connect the island of Rock Island with the city of Davenport, under the contract entered into by the United States on the one part, and the undersigned on the other part, dated the first day of June, one thousand eight hundred and sixty-nine; and we hereby request that the United States shall forthwith construct the requisite coffer-dams, exhaust the water therefrom, and prepare the bed for said piers and abutments where necessary, for the commencement of said work.

"Very respectfully, yours,

"HARVEY & LIVESEY.

"Brevet Major General G. K. WARREN,
"*Major of Engineers, United States Army.*"

This letter was received by Major Stickney on behalf of General Warren on the day of its date. On the next day, Major Stickney replied to it as follows:

"OFFICE OF THE ROCK ISLAND BRIDGE,
"*Rock Island, Ill., Sept. 14, 1869.*

"GENTS: Your letter of the 13th inst., addressed to Brevet Major General G. K. Warren, was received yesterday, and he has directed me to say that, after fully considering the subject of your letter and the

contract entered into between yourselves and the United States, we are fully convinced that you, and not the United States, are required by said contract to construct the requisite coffer-dams, pump the water from the same, and prepare the beds for the piers and abutments.

"Very respectfully, your obedient servant,

"AMOS STICKNEY,

"*Captain of Engineers, Brevet Major U. S. Army.*

"Messrs. HARVEY & LIVESEY."

On the 15th of September the claimants addressed and sent to General Warren the following written protest:

"*September 15, 1869.*

"SIR: Whereas the undersigned claim that, under the contract entered into by the United States on the one part and the undersigned of the other part, dated the 1st day of June, one thousand eight hundred and sixty-nine, to construct the piers and abutments for the new rail and wagon bridge to be built to connect the island of Rock Island with the city of Davenport, the United States are obliged to build the requisite coffer-dams, pump the water therefrom, and prepare the beds where necessary, for said piers and abutments;

"And whereas on the 13th day of September, A. D. 1869, we made demand in writing on the United States to build said dams, pump the water therefrom, and prepare said beds;

"And whereas the United States did, then and there, in writing, on the 14th day of September, refuse either to build said dams, pump the water therefrom, or prepare said beds:

"Now, therefore, we do hereby protest against such refusal of the United States to build said dams, pump the water therefrom, and prepare said beds; and do hereby notify the United States that we shall proceed at once to build said dams, pump the water therefrom, and prepare said beds, and shall hold the United States for the payment of the costs and expenses of the same.

"Very respectfully, yours, &c.,

"HARVEY & LIVESEY.

"Brevet Major General G. K. WARREN,

"*Major of Engineers, U. S. Army.*"

Upon a copy of said protest returned to the claimants, the following indorsement was made by General Warren:

"Received this 15th day of September, A. D. 1869, the original whereof this is a copy. And in order not to delay the work, I consent to the work going on until the matter can be referred to the United States Attorney-General; but in this consent it must be con-

sidered that nothing is admitted in favor of the claim of the contractors to their interpretation of the contract.

"G. K. WARREN,

"*Major Engineers, and Brevet Major General U. S. Army,*

"*In charge construction of bridge.*"

General Humphreys, Chief of Engineers, approved of the construction put upon the contract by Major Stickney, in his letter of September 14, and their decision was communicated to the claimants on the 10th day of the following November. Meanwhile the claimants went on with the work on the coffer-dams. Immediately upon the refusal of the officer in charge of the work to build them, and to pump the water therefrom, and prepare the beds for the abutments and piers, they proceeded to build the requisite coffer-dams; and all that was required in that respect while the work was in the hands of the claimants was done by them. All the materials for the coffer-dams, including sand and stone, were furnished by the claimants at their own expense. It did not appear what amount of sand was thus furnished by the contractors. The claimants built eight entire coffer-dams, and three parts of dams. There were about fifty yards of loose stone used in each protecting crib, and there were somewhere between 15 and 20 such cribs. The Government did not furnish any of this stone, but the contractors took stone out of the stone-yard to build some of their cribs. It appeared that the claimants paid the defendants for 259 cubic yards of stone spawl used for that purpose. One Addison M. Scott testified that some time in the spring of 1870 the claimant, Livesey, said to him that "the claimants' intention was to build these dams, until they found that if they did so they were also obliged to make the excavations and prepare the beds. After they discovered this, they concluded to deny the intention of building the coffer-dams. He, Livesey, also said that they had no intention when they took the contract of making the excavations or preparing the beds. The cost of making said excavations appears to have been $1,883. The cost of preparing said beds was small compared with the cost of the coffer-dams. The cost of the construction of the coffer-dams is variously estimated from $25,000 to $125,000. The officers of the defendant testify that it is undoubtedly more difficult and expensive to construct and build the coffer-dams and protection, and all the work incident thereto to make them ready to receive the masonry, than it is to prepare and set the masonry.

The work did not advance to the satisfaction of the defendant. On the 6th day of October, 1870, the claimants were notified in writing, by the officer in charge of that work on the bridge, that, in consequence of complaints that had reached the Chief of Engineers United States Army of the tardy progress of the work upon the masonry of the bridge, that officer had been required to take suitable and efficient measures to expedite the work; and in view of that requirement he informed the claimants that he would take the work as it stood, and carry it on under the provision of the contract which

contemplated such a change. On the 7th of the same month the claimants, in writing, refused to give up said work; whereupon, on that day, the officer notified them, in writing, that he would, the next morning at seven o'clock, take possession of the work for the Government, which he did; and thenceforward the work was prosecuted by the officers of the Government. The claimants, at the time of such taking possession, made written protest against it, and demanded permission to complete the work according to contract; and, in default thereof, announced that they should hold the United States for all damages sustained.

The claimants thereupon, on the 14th December, 1870, filed their petition in this court, claiming to recover of the defendants the following amounts:

1. For damages incurred by reason of the unreasonable delay caused by defendant, from 7th June, 1869, to September 4, 1869	$25,000
2. For putting in coffer-dams and protections, for pumping the water therefrom, and for preparing the beds for the piers and abutments	75,000
3. For loss of profits incured by the unlawful reduction of the dimensions of the piers and abutments	33,600
4. For increase on the cost of work, by having been compelled to do it in cold weather	15,000
5. For constructing 4,400 cubic yards of masonry at, say, $12 per yard	52,800
6. For loss caused by neglect of defendant to furnish materials and locate piers and abutments, whereby the plaintiffs, their workmen and tools, were kept idle	15,000
7. For loss of machinery, vessels, and tools, caused by the ejectment of the plaintiffs from the work	25,000
8. For dressing coping and corners of abutments, and dressing noses of piers under water [not required by contract]	5,000
	246,400
Deduct cash payment	46,000
	200,400

The claimants prosecuted their said suit, and at December term, 1872, this court announced its findings of fact therein, and the following conclusions of law thereon:

"1. That the contract sued upon did not require the United States, but required the claimants at their own expense, to put in coffer-dams and protections, and to pump the water therefrom, and to prepare the beds for the piers and abutments which the claimants agreeed to build.

"2. That the reduction made in the dimensions of the piers and

abutments of said bridge, as originally projected, was not, by the legal construction of the contract, wrongful to the claimants.

"3. That the claimants did not sustain any damage by reason of the idleness of their tools, machinery, and vessels, after the 8th of October, 1870, which they would not have sustained had they, on that day, completed their work under said contract, or which was not incident to the termination, at any time, of their work under said contract.

"4. That the claimants are not entitled to any recovery under the second, third, fourth, seventh, or eighth items of their demand, as stated in the petition.

"5. That the claimants are entitled to recover of the defendants the sum of $42,306.49."

And judgment was rendered for the recovery of the last-named sum.

Congress thereupon enacted the law already referred to. Availing themselves of the jurisdiction thus conferred, the claimants, on the 30th day of August, 1876, brought suit in this court against the United States, setting forth their original petition, and the proceedings therein, and the payment of the judgment rendered therein, praying to have the contract reformed in accordance with the intent of the parties; and demanding the recovery of the further sum of $239,600, according to the following specifications:

1. For labor done and materials furnished by the plaintiffs in constructing the coffer-dams, and in performing the work necessarily connected therewith, and preliminary to the masonry work for said piers and abutments	$75,000 00
2. For loss and damages resulting to the claimants in consequence of the reduction of the dimensions of the piers and abutments, made subsequently to the making of the contract	33,600 00
3. For loss of machinery, vessels, and tools, caused by taking from the plaintiffs the work under their contract	25,000 00
4. For extra work—dressing coping and corners of abutments, and dressing noses of piers under water [this work not being required by the contract]	5,000 00
5. For the profits they could have made had they been permitted to build the cross-walls and crib-work connecting the upper and lower rests with the pivot [part of the contract]	48,000 00
6. For profits they might have made had they been permitted to construct the wing-walls for the Iowa shore abutment. These walls were "rip-rap," and a part of the work, under the contract, out of which liberal profits could have been made; the agents of the United States performed the work	3,000 00

7. For profits they might have made had they been permitted to complete the work according to the intention of the parties and the terms of the contract, in addition to the foregoing charges..... 50,000 00

$239,600 00

8. For interest on the amount found due to the plaintiffs on an equitable adjustment of accounts between the parties, from October 6, 1870, until the date of the judgment of this court, at the rate of six (6) per centum per annum".....

The fefendants demurred to this petition, and this court, on argument, held that "the purpose of the statute was to supply a defect and not to duplicate litigation;" that this court was "to act as a court of equity and not to act as it before might have acted, as a court of law," and therefore "what has been done is to remain fixed, and what before could not be done is to be the sole subject of judicial ascertainment." "The relief which it may give must be limited to matters not before determined." (12 C. Cls. R., 141.) The demurrer was therefore sustained, with leave to the claimants to file an amended petition. Under this ruling an amended petition was filed. The present proceedings, therefore, relate only to the claims for the cost of the coffer-dams, and for the loss of profits resulting from the reduction of the dimensions of the piers and abutments; that is, claims No. 1 and No. 2 on the last named list. At the trial on the merits in equity, the parties offered the identical evidence which was offered at the hearing of the case at law, and no other.

In support of their demand that the contract should be reformed in equity the claimants aver, as to the coffer-dam, that the sum bid by them was manifestly compensation for the masonry alone exclusive of the dams, and they cite the estimates of General Rodman and the bid of Reynolds, Saulpaugh & Co., in support of the averment. Had the language of the proposals and their own bid formed the sole evidence of the contract it would, they say, taken in connection with the Rodman estimate and the Reynolds bid, and the manifest insufficiency of their own bid to cover the cost of both masonry and coffer-dams, inevitably have forced a court to the conclusion that both parties contemplated that the coffer-dams were to be built by the United States. They say that the parties put this construction upon the contract in practice. The United States were to furnish stone, sand, and cement for the masonry. If the coffer-dams were included in the contract for the masonry these articles, when used in the dams, should have been furnished by the defendants. They were, however, furnished by the claimants, who even paid the defendants for some loose stone from the arsenal yard, which was used in them. Therefore, they argue, the written contract does not, in this respect, express the true agreement between the parties, and a court of equity should reform it and make it express it.

In reply to this the defendants refer to General Rodman's conversation with the claimants when the bid was opened; to the conversation of Davies with them respecting the furnishing of lumber to build the dams; to the conversation between Livesey and Scott, in which the former said that the claimants supposed they were to build the coffer-dam, and had at one time intended to build them without question; to the apparent acquiescence of the claimants in this construction of the contract by purchasing, in the summer of 1869, materials for the dam, and machines to be used in its construction; and to the undisputed fact that until they saw General Warren's drawings and plans and discovered that the shapes of the piers were materially changed to their detriment, the claimants made no pretense that the defendants were to build the coffer-dams. From all this the defendants argue that there was neither mistake nor accident in the reduction of the contract of the parties to the writing on the 1st of June, 1869; but that, on the contrary, it expresses, as construed by this court in the former suit, the exact intent of both parties respecting the coffer-dam.

With reference to the loss of profits by the reduction of the piers, the claimants say that General Rodman's proposals and their bid referred to a definite thing—the piers and abutments planned by General Rodman; that the acceptance of their proposals by General Rodman made the real contract between the parties; that the subsequent written contract was intended by both parties to carry into execution the contract thus agreed to, and that it was not the purpose of either party to permit the officers of the United States to materially vary the plans for the piers so as to essentially change the obligation of either. Therefore, they say, a court of equity should construe the clause in the contract of June 1, which required the claimants to construct the proposed piers and abutments in accordance with plans and specifications to be fixed by proper authority acting for the United States, as not permitting such authority to prescribe piers and abutments essentially different from those planned by General Rodman.

The defendants deny that the written contract does not express their intent in this respect, and say further that whether it does or does not express it, no equity jurisdiction is conferred upon this court to reform it in regard to this point. The act of August 14, 1876, they say, refers to this court the claim of Harvey & Livesey for alleged labor done and materials furnished under their contract, and nothing more; and the equity jurisdiction is conferred upon this court only "to that end." The injury for which the claimants seek relief in consequence of the change in the form of the piers is in no respect, they say, a claim for labor done and materials furnished, but a claim for a loss of profits by reason of not furnishing materials and of not doing labor, which is quite another thing. Therefore, it is argued, it is not within the statute, and this court has no jurisdiction over it.

We have been thus minute in tracing the history of this litigation and the facts proved in the course of it, and the contentions of the

respective parties, because, in the absence of the customary findings of fact, such minuteness seemed necessary to the comprehension of the conclusions which we reach.

The claimants fail to satisfy us that the written contract of June 1 does not express the intent of both parties as to the coffer-dams; and the burden of proof being upon them to do so, their action falls to the ground on this point. In the face of the array of positive, unexplained, and unimpeached testimony to the contrary, we cannot deduce from circumstances, however reasonable or probable in themselves, that the claimants did not intend to build the coffer-dams when they signed the contract of June 1; and even were we satisfied that the claimants executed the contract of June 1 in mistake of their rights, there is no evidence that the defendants shared the mistake. The following familiar doctrine of equity, well stated in a case relied upon by both parties at the trial, (Hearne v. Marine Ins. Co., 20 Wall., 488,) is fatal to the claimants on this point:

"Where the agreement, as reduced to writing, omits or contains terms or stipulations contrary to the common intention of the parties, the instrument will be corrected so as to make it conform to their real intent. The parties will be placed as they would have stood if the mistake had not occurred. (Kerr on Fraud and Mistake, 419, 420.) The party alleging the mistake must show exactly in what it consists, and the correction that should be made. The evidence must be such as to leave no reasonable doubt upon the mind of the court as to either of these points. (Beaumont v. Bramley, 1 Turner & Russell, 41–50; Marquess of Breadalbane v. Marquess of Chandos, 2 Mylne & Craig, 711; Fowler v. Fowler, 4 DeGex & Jones, 255; Sells v. Sells, 1 Drewry & Smales, 42; Lloyd v. Kocker, 17 Beavan, 144.) The mistake must be mutual and common to both parties to the instrument. It must appear that both have done what neither intended. (Rooke v. Lord Kensington, 2 Kay & Johnson, 753; Eaton v. Bennet, 34 Beavan, 196.) A mistake on one side may be a ground for rescinding, but not for reforming a contract. (Mortimer v. Shortale, 2 Drury & Warren, 372; v.Sells Sells, supra.) Where the minds of the parties have not met, there is no contract, and hence none to be rectified. (Bentley v. McKay, 31 L. J. Chancery, 709; Baldwin et al. v. Mildeberger, 2 Hall, 176; Kowles v. Bowne, 10 Paige, 534; Kalverley v. Williams, 1 Vesey, jr., 211.")

In regard to the piers, the evidence goes to show that the claimants, as soon as they comprehended the changes made by General Warren in General Rodmans' plans, did assert that the changes were to their detriment and in violation of their rights. On the defendants' side, the evidence goes to show that their agent at Rock Island recognized the justice of the claimants' assertions as to the operation of the changes, and advised that they should be compensated for them. The contract, it will be remembered, was made by the Bureau of Ordnance; the changes in the plans by the Bureau of Engineers. The decision of General Warren as to the legal effect of the contract was made on the 14th of September, and was communicated to the

claimants, with a consent that the work might go on until the matter could be referred to the Attorney General. It was not until the 10th November that the Government's answer was communicated to the claimants. In view of the prompt action of the claimants on ascertaining the nature of the changes; of the admissions of the defendant agents, that the changes were burdensome and inequitable; of the long delay in the decision of the case at Washington; and of its final decision apparently on strictly legal grounds, we should be disposed to regard this as a case for equitable interposition for the purpose of further inquiry and the ascertainment of the rights of the parties in equity, if we felt that we had jurisdiction. It is clear, however, that the statute does not authorize us to entertain these considerations. In these proceedings we can only hear and determine claims for labor done and materials furnished by the claimants under their contract with the defendant. If, on review of all the facts in the case, the claimants have suffered injury for which they have received no compensation—a point upon which we express no opinion—Congress has reserved to itself the power of measuring the extent of the injury and of deciding whether it shall be compensated.

The plaintiff's petition must be dismissed.

NOTT, J., dissenting:

In Garfield's case, (11 C. Cl's R., 592; 93 U. S. R., 242,) the Post-Office Department advertised for an entire service or route, but said that the bidder might also state separately in his proposals for what he would perform a part of the service, or half the route. The bidder said nothing about the entire service in his bid, but offered to perform the partial service at a price specified. A majority of this court held that the acceptance of that offer did not make a contract; but the Supreme Court, on appeal, reversed the decision, and held that the advertisement, proposal, and acceptance made a valid, executory contract, notwithstanding that the parties mutually contemplated a formal, written contract, which should, with more particularity, express their joint agreement.

In this case, in precisely the same manner: the officer in charge advertised for the entire service of building the pier and abutments of the Rock Island bridge, but said in his advertisement that bidders might also state separately in their proposals for what they would build the "masonry" of the piers and abutments, and for what the coffer-dams, which constituted the remainder of the whole work. The claimants here said nothing about the entire work, nor about the coffer-dams, but offered "build the masonry of the piers and abutments" at say $12 a yard. The officer in charge accepted their offer; and that, under the decision of the Supreme Court in Garfield's case, and likewise under the decision in the Insurance Company v. Hearne, (20 Wall., R., 404,) made the contract, unless it was intentionally modified or changed by the subsequent act of the parties. What was their subsequent action?

No subsequent negotiation took place, nor any attempt was made on either side to change or modify what was thus agreed upon. A formal written contract was drawn up by a clerk and executed by the parties. On the one hand there was no fraudulent representation made to the claimants, in consequence of which they ignorantly signed the instrument; on the other, there was no intermediate negotiations to show that the formal contract was an intentional departure from the terms of the claimants' bid.

Before the work began, General Rodman was removed, and soon after died. His successor, judging only from the terms of the contract which he found already made for him, very properly held that the claimants must build the coffer-dams, but there is no contemporary act of General Rodman to show that he understood that formal instrument departed from the terms of the existing agreement, and in effect made an entirely new contract. The case stands as if he had died immediately after executing the contract, leaving the court free to judge from the terms of the two instruments (the advertisement and bid on the one hand, and the formal contract on the other) whether the latter effected any alteration of the former, and whether such a change was a matter of agreement or of mistake.

I am of the opinion that no change of the existing agreement was intended, and that the evidence is overwhelming, or, as Lord Thurlow termed it, "irrefragable," to establish a mistake. Indeed, I do not hesitate to say that no case of mistake can be found in the books where the evidence of mutual intention and mutual mistake is so satisfactory, and, indeed, uncontrovertible, as in the case now before me.

In the first place: General Rodman, who, for the purposes of this inquiry, must be considered as the defendant, had previously estimated the total cost of these piers and abutments at $24 a yard, including therein the stone, sand, and cement, which the Government was to furnish. The average of the claimants' bid was less than $12 a yard. It is therefore impossible that General Rodman could have misunderstood the value of the thing contracted for, or have ignorantly supposed that the other party, in the language of his advertisement, was "willing to complete the work" at less than $12 a yard, which he knew to be worth nearly $24. He knew, also, that his advertisement invited proposals for the complete work and for the masonry alone, and that the claimants' proposal "to build the masonry" agreed in terms and in value with both his previous advertisement and his previous estimate. The concurrence of the parties' previous terms and previous estimates hardly ever occurs in such cases, and when they come together as they do here; they lift the case out of the uncertainties of parol evidence and make it clear that a mutual mistake was committed or an unconscionable advantage obtained.

In the second place: The only competing bid placed the value of the completed work at $19.10 a yard, an amount closely agreeing with General Rodman's own estimate; the value of the masonry at $12.70 a yard, an amount closely agreeing with claimants' offer;

and the value of the coffer-dams at $63,700. General Rodman thereby again had his attention called to the fact that the claimants' bid was to do only a portion of the work.

If any doubt could have existed in General Rodman's mind as to the meaning of the claimants' proposal, none possibly could have existed as to the meaning of Reynolds, Saulpaugh & Co.'s, and when they named $12.70 for the masonry alone, and the claimants (in round numbers) $12, and both of these offers harmonized with his own previous estimate, he must have understood that they referred to one and the same thing: the partial service, and not the completed work.

In the third place: This was not a trivial thing that might have been incidental to the contract. The variance here between the consideration of the first, or preliminary, and the second, or formal, contract exceeded the variance in any case, English or American, that has been cited on the argument. In the Insurance Company v. Hearne (20 Wall. R., 404), the variance was 17 per cent., and the difference of consideration amounted to but $20. In this case the variance was 54 per cent., and the difference of consideration amounted to $63,700. This deviation from the primary contract, and from the well-understood value of the work, was not only great, but monstrous—monstrous in ratio and monstrous in amount. The magnitude of the wrong commends the case in the strongest manner to the consideration of a court of equity, and makes such cases as the Insurance Company v. Hearne (supra), and Mortimer v. Shortall (2 Drew. & War. R., 363), where relief was granted and the contracts reformed, seem utterly insignificant.

The only contemporary act or utterance of General Rodman which can have any bearing upon the question of mistake was cited by the defendants upon the argument, and relied upon to show that no mistake existed on his part. It was this:

When the bids were opened, so a witness for the defendant testifies, "General Rodman remarked something to this effect: That the bid of Reynolds, Saulpaugh & Co. was high, and that their bid (referring to the claimants) was very low; and he asked them if they understood what they were bidding on, or understood their business, and whether their bondsmen knew?" The same witness also testifies that the contract was not awarded immediately, but that General Rodman said "that he would look over the bids again and let them, the claimants, know in a few days." Now, what were these bids that it would require a few days for General Rodman to examine?

In was stated in the claimants' bid that they would build the masonry of the "small piers and abutments" at $11 a yard, and that of the "draw pier" at $13. Reynolds, Saulpaugh & Co., on the contrary, made no distinction, and offered to build the masonry of all at $12.70 a yard. It has been assumed in the hearing of the case that the claimants' bid averaged $12 a yard. But such is not the fact. The estimated quantity of masonry at the time was 10,000

yards, and, according to General Rodman's plans then shown to the bidders, the draw pier (as subsequently calculated by General Warren when testifying in the case) would contain but 4,000 yards. The bids, therefore, which were to receive General Rodman's consideration, when analyzed, would stand thus:

The Claimants.		*Reynolds, Saulpaugh & Co.'s.*	
4,000 yards, at $13.....	$52,000	10,000 yards, at $12.70.....	$127,000
6,000 yards, at $11.....	66,000		
Total.....	118,000		

Equivalent to $11.80 per yard.

Here, then, was a difference of $9,000 in favor of the claimants; or reducing it to the price per yard of the then estimated quantity, they offered to do the work of building for an average of $11.80 per yard, while Reynolds, Saulpaugh & Co. demanded $12.70.

Conceding that this witness of the defendants, who testified three years after the event, has given the precise language of General Rodman, this difference of nearly $1 a yard may well satisfy his remark that the bid of the one party was high and that of the other very low.

Furthermore, it is manifest that if General Rodman understood the claimant's bid in the sense of the subsequent formal contract, there was no need of his taking time to consider. As between $19.10 a yard and $11.80 a yard—as between $191,000 and $118,000, there was no room for doubts and no necessity for reflection. But if General Rodman found the one party bidding $12.70 a yard for all of the masonry and $63,700 for the coffer-dams, and the other party bidding $13 for the draw-pier and $11 for the others, he might well devote some time to calculating the dimensions of the draw-pier and in determining whether he would accept the bid for the coffer-dam.

I am aware that there is some evidence in the case intended to show by the testimony of prejudiced witnesses, taken several years after the event, certain loose admissions by the claimants to the effect that they understood their bid in the sense of the subsequent contract. But, beside the "irrefragable" documentary evidence and written agreements of the parties, this testimony of parol admissions merely illustrates the characterization of all the authorities that such testimony is the weakest, the most dangerous, the most suspicious evidence admissible in courts. Indeed, it is to be noted here that, unlike such cases generally, all of the evidence relied upon by the claimants to establish the mistake is documentary and indisputable, while all of the evidence relied upon by the defendant is parol, and of the loosest and most unsatisfactory character.

Passing now to the law of the case, I observe that while courts have reiterated in a general way the phrase that the mistake must

be mutual and common to both parties to the instrument, yet, nevertheless, the cases, though unclassified, fall, so far as the evidence of mutual mistake is involved, into two classes. Where the instrument sought to be reformed is the first written agreement between the parties, and the evidence to establish the mistake is parol or ex parte written memorada (Lyman v. United Insurance Co., 2 Johns. Ch. R., 630), then courts of equity require the strongest and most convincing proof that all preliminary negotiations were not intentionally merged in the written instrument. And, indeed, until the case of Gillespie v. Moon (2 Johns. Ch. R., 585), it was supposed that parol testimony could not prevail against the sworn answer of the defendant denying his own mistake. (Irnham v. Child, 1 Bro. C. C., 93.) But where a primary valid written contract existed between the parties, and the contract sought to be reformed is a secondary formal instrument contemplated by the first, and intended to carry into effect its provisions with increased particularity and care, as where a written contract to assure contemplates a formal policy of insurance, or where articles of dissolution of partnership contemplate a bond of indemnity to one of the partners, there, as was said by Chief-Justice Marshall in Finley v. Linn (6 Cr. R., 238), the second instrument "may be restrained" by the first.

Thus, in the recent case of The Insurance Company v. Hearn (before cited) there was not a particle of evidence (so far as the decision discloses) to show mistake on the part of the insurance company when they executed and sent their policy. Undoubtedly their officers would have testified that they knew precisely what they were doing, and meant that the policy should cover no more than it expressed; yet the Supreme Court, while reiterating the general principle that the mistake must be mutual, did not hesitate to ascribe mistake to the policy, and upon the express ground that it departed from the primary agreement. Thus, too, there may be cases where the instrument sought to be reformed is in the handwriting of the defendant, and where it was morally impossible that he was mistaken as to what he had himself written, yet elementary writers have not hesitated to say that "relief upon a defective instrument is the more readily afforded when the party to be charged thereon is himself the person who prepared or perfected it." (Kerr, Fraud and Mistake, 421.)

The fact is, and always has been, that where the defendant stands in the dilemma of having made a mistake in good faith, or of having obtained an unconscionable advantage in bad faith, courts of equity will ascribe mistake to his act without evidence, and will not allow him to impute quasi fraud to his own act. And generally it may be said, that where there was a valid written contract between the parties, and the second instrument sought to be reformed was intended to carry out and give effect to the first, but departed from it without intermediate negotiations to give color to the intent of a departure, and was written or prepared by a defendant who obtained an advantage by the alteration, courts of equity have never yet re-

fused relief, and have never yet stopped to inquire whether the defendant did not know what he was about, or intended the alteration which he ex parte effected.

Equity exacts the utmost good faith; and where two men are bound to each other by a common agreement, and one of them allows the other to execute an instrument which he has himself prepared, in the belief that it carries out the intent of the first, while in fact it departs from it to the benefit of the party who prepared it, the suppressio veri, though not fraud at law, is nevertheless the "unconscionable advantage" spoken of in the books.

As great stress has been laid upon the illustrative cases cited by the Supreme Court in Hearn v. The Insurance Co., I proceed to examine them all, for the porpose of ascertaining whether there be one which requires positive evidence of mistake on the part of the defendant in a case like this; that is to say, in a case where the instrument sought to be reformed departs from a valid written contract which it was intended to carry out.

In Beaumont v. Bramley (1 Turn. & Rus. R., 41) the evidence to establish the mistake was parol; the deed sought to be reformed recited a more extended agreement than the plaintiff set up; the original party to the contract was dead, and had averred no mistake in his life-time; his agent who negotiated the business had acknowledged the correctness of the deed sought to be reformed; the agent of the other party was not called as a witness; in short, the proofs utterly failed to establish a mistake by anybody. The opinion of Lord Eldon, on the contrary, has a direct bearing upon the present case, and forms high authority to sustain the distinction which courts of equity have always made between the two classes of cases. "There is no doubt," he says, "that if an instrument affects by its recital to carry into execution a certain agreement and goes beyond that agreement the court will rectify it; because then it has clear evidence on the face of the instrument itself that the instrument operates beyond its intended operation." In other words: where a valid written agreement takes the place of parol evidence in establishing the mistake, a court of equity will not consider it a matter of reasonable doubt that a mistake occurred.

In Brendalbane v. Chandos (2 Mylne & Cr. R., 711) there were written "proposals" between two fathers concerning a marriage settlement for the daughter of one of them. These "proposals," it was subsequently claimed, implied that the marriage portion should exclude the daughter, according to a Scottish custom, from future participation in her father's estate. After the father's death, his other heirs sought to maintain this by reforming the marriage settlement after marriage. But the court held that the "proposals" did not imply an exclusion, and that if they did they were strictly between the two fathers and did not amount to a contract between father and daughter. In other words, this case also broke down utterly upon the proofs and failed to show either a mistake or an agreement.

As to Fowler v. Fowler (4 De Gex & Jones R., 250) it is enough

to say of it what Lord Chelmsford said of it in his decision, that the agent who acted for the plaintiff could not have made the mistake complained of; that "his conduct upon that supposition is quite inexplicable."

Sells v. Sells (1 Drewry & Sm. 42) was a clear case of misunderstanding, where the plaintiff in good faith intended one thing and the defendant in good faith intended another. In a conversation relating to an ante-nuptial agreement, it was proposed that all "after-acquired property" should be subject to its provisions. The husband understood this to mean the wife's after-acquired property, but her representative understood it to refer to the husband's, and so it was stated in the contract. After marriage he sought to reform the anti-nuptial agreement for his own mistake, and, it is needless to add, did not succeed.

Lloyd v. Cocker (19 Beav. R. 140) was another marriage settlement case, being an attempt to break a trust. The master of the rolls, Romilly, disposes of the case in a single sentence when he says: "This settlement was made in 1827, now twenty-seven years ago, and no mistake was discovered till now, when the father and daughter want to dispose of the fund."

Rooke v. Lord Kensington (2 Kay & John. R., 753) is a prolix and involved case, but when analyzed it amounts to nothing more than this, that the plaintiff assumed that a certain property did pass by a certain mortgage, and asked to have the description corrected for mistake, but Lord Hatherly, then vice chancellor, held that by a proper construction of the mortgage, the property was not included in the description, and consequently that there was no ground of mistake and no necessity for relief.

Eaton v. Bennett (34 Beav. R., 196) was another wild attempt to reform an ante-nuptial agreement after marriage; where, moreover, the plaintiff knew of the so-called mistake before marriage, and, in fact, executed the agreement under what he called a protest. The wonder is that such a case should be cited as one of mistake, or indeed that it ever found its way into the reports.

Mortimer v. Shortall (2 Drury & War. R., 363) is the last of the cases cited to show that the mistake must be mutual, and the evidence such as to leave no reasonable doubt upon the mind of the court, and of it several things should be noted: first: that the maxims did not prevail against the case, for the plaintiff succeeded in having the deed reformed; second: that this was done entirely upon parol and circumstantial evidence, for the deed was the first and only written agreement between the parties; third: that the injury caused by the alleged mistake was trivial, and the departure from the intended agreement slight, inasmuch as the mistake was merely an omission to except from the operation of a lease six acres out of one hundred and thirty-six, and the rent was per the acreage; fourth: that Lord St. Leonard, while commenting upon the difficulty of reforming a deed upon nothing but parol testimony, and the necessity of having evidence which shall leave the mind of the court free

from doubt, expressly says that "there is no objection to correct a deed by parol evidence when you have anything in writing beyond the parol evidence to go by."

It is, therefore, very clear to my mind that there is not one of these cases which bears the slightest resemblance to the one now before us, or which is an authority for saying that there must be other evidence of mistake than a preliminary written agreement.

As to the private act under which we take jurisdiction, I am of the opinion that the words which refer to this court the claimants' claim "for alleged labor done and materials furnished under their contract," are words of description and not words of limitation. The latter part of the act empowers this court to proceed "as a court of equity jurisdiction" to "reform said contract," and to "render such judgment as justice and right between the claimants and the said government may require." At the time when the mistake was discovered the claimants had no court of equity into which they could bring the Government, either to reform the contract because of the mutuality of the mistake, or to rescind it because of their own. I hold that the purpose of the private act was to cure that defect of jurisdiction, and that it confers upon this court the most ample power to do justice, either by reforming the contract for mutual mistake, or by treating it as rescinded for the mistake of the claimants, and awarding them damages upon an account for such work as was additional to that contemplated by their bid. Ordinarily, private acts are of the nature of grants, and are to be strictly construed; but private acts referring controversies between the government and its citizens to judicial tribunals for judicial redress are of the nature of remedial statutes, and are to be construed so as to carry out the just intent of the legislature. There have been but two of these private acts that have gone to the Supreme Court for construction, and in both instances that court overruled the strict construction of this, and construed them liberally as remedial statutes. (Cross's Case, C. Cls. R.; Roberts's Case, id.)

Upon the whole case, I am of the opinion that the contract should be reformed so as to conform to the terms of the preliminary contract between the parties, and that the claimants should recover for the coffer-dams as for extra work done under the contract as reformed.

Decree of the Court.

At a Court of Claims held at the Capitol, in the city of Washington, on the 13th day of May, A. D. 1878, judgment was ordered to be entered up as follows:

The Court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said petition of the claimants, James W. Harvey and James Livesey, be dismissed.

Application for and allowance of an appeal.

JAMES W. HARVEY AND JAMES LIVESEY,
vs.
THE UNITED STATES.
No. 11,406.

And now come the said plaintiffs, by their counsel, and appeal to the Supreme Court of the United States from the judgment and decree rendered against them in the above entitled cause.

ENOCH TOTTEN.
Counsel for Plaintiffs.

Filed May 14, 1878.

And now, to wit, May 14, 1878, it is ordered that the appeal be allowed as prayed for.

In the Court of Claims.

JAMES W. HARVEY AND JAMES LIVESEY,
vs.
THE UNITED STATES.
No. 11,406.

I, John Randolph, Assistant Clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause; of the findings of fact by the court, and the conclusions of law thereon; of the judgment entered June 4, 1873; of the pleadings in equity under the act of Congress approved August 14, 1876; of the evidence filed and at the hearing of the said cause, offered and read in behalf of the said claimants and of the defendants; of the opinion of the court and the dissenting opinion; of the decree of the court, and of the application of the claimants for and the allowance of an appeal to the Supreme court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-fourth day of June, A. D. 1878.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.